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JUDGMENT OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

No. of the case	3-4-1-25-13
Date of judgment	2 July 2013
Composition of court	Chairman Märt Rask member Tõnu Anton, Eerik Kergandberg, Lea Laarmaa and Jaak Luik
Court Case	Appeal by LRS Finance SA of 31 May 2013
Hearing	Written proceeding

DECISION **To dismiss the appeal of RLS Finance SA**

FACTS AND COURSE OF PROCEDURE

1. On 31 May 2013, *attorney (advokaat)* Martti Peetsalu and attorney-at-law (*vandeadvokaat*) Indrek Leppik, the contractual representatives of RLS Finance SA, lodged an appeal with the Supreme Court. In the appeal, the appellant requested that subsection 4 of § 54 of the Financial Supervision Authority Act (FSAA) be declared unconstitutional to the extent that it allows the court to gather evidence solely in bankruptcy and liquidation proceedings.

2. According to the appeal, RLS Finance SA filed a claim with the Court of Arbitration of the Estonian Chamber of Commerce and Industry. In the arbitration proceedings, the claimant sought to prove its submissions regarding the bad faith actions of the defendant using the materials of the case file of administrative procedure no. 3-12-2575 conducted in the Estonian Financial Supervision Authority. To that end, the claimant asked the court of arbitration to apply for the civil court's assistance in accordance with the procedure provided for in subsection 1 of § 740 of the Code of Civil Procedure (CCP). The Court of Arbitration of the Estonian Chamber of Commerce and Industry dismissed the claimant's request on 21 May 2013. The Court of Arbitration held that clause 4 of subsection 4 of § 54 of the FSAA precludes the right of the civil court to gather the evidence requested by the claimant in this case.

3. According to the representatives of the appellant, when parties have recourse to a court of arbitration they do not waive their constitutional rights, notably the right to a fair hearing and the right to request that legislation of general application be declared unconstitutional and repealed. The appellant's representatives noted that the award of the court of arbitration is final and the appellant lacks another effective means of judicial protection against an infringement of fundamental rights. The right to address a circuit court (a court of appeal) for the purpose of quashing an arbitration award, as provided for in § 751 of the CCP, is not an effective legal remedy in the opinion of the appellant's representatives.

OPINION OF CHAMBER

4. The appellant's representatives have lodged with the Supreme Court an appeal where they submit that the appellant's fundamental rights have been infringed. The Judicial Constitutional Review Procedure Act does not explicitly provide for the right to lodge an individual constitutional review appeal with the Supreme Court. However, the Supreme Court has held that, under exceptional circumstances, a person may address the Supreme Court directly in order to have their fundamental rights protected. The Supreme Court is competent to hear an individual appeal if the appellant does not have and has not had any other effective chance to seek judicial protection against an infringement of fundamental rights (most recently, the order of the Constitutional Review Chamber of the Supreme Court of 29 May 2013 in case no. 3-4-1-10-13, point 31).

5. Therefore, the Chamber will assess the admissibility of the appeal.

6. The appellant's representatives request that the Supreme Court declare the provision limiting the competence of the civil court unconstitutional. The appellant has entered into an agreement to resolve a dispute arising from a private law relationship in a court of arbitration. The court of arbitration does not have the right to initiate specific constitutional review in the Supreme Court and therefore the right of parties to arbitration proceedings to have legislation declared unconstitutional are substantively limited. In the order in case no. 3-4-1-1-08 of 5 February 2008, the Constitutional Review Chamber of the Supreme Court held that such a difference from the right provided for in the second sentence of subsection 1 of § 15 of the Constitution to demand that any legal instrument be declared unconstitutional upon hearing one's case is justified in arbitration proceedings by the voluntary waiver of one's right to have recourse to the court in the event of infringement of one's rights and freedoms (the first sentence of subsection 1 of § 15 of the Constitution). Upon entry into an arbitration agreement, the parties must inevitably take into account the fact that by doing so they also preclude, at least to the substantial extent, any review of the constitutionality of the applicable provisions in court (point 6 of the order). The Chamber found that since, by entering into an arbitration agreement, a person voluntarily waives to a substantial extent the guarantees applicable upon adjudication of a case in judicial proceedings, the rules of procedure in force provide the person with sufficiently effective opportunities for the judicial reviewing of an alleged infringement of their fundamental rights (point 9 of the order). Although a court of arbitration cannot initiate the process of declaring a provision of law unconstitutional, the court of arbitration is not always strictly bound to the applicable provision upon resolving a dispute. It cannot be precluded that a person can make submissions on the unconstitutionality of the disputed instruments in a claim for setting aside an arbitration award that will, in accordance with subsection 4 of § 755 of the CCP, be heard by a circuit court (court of appeal) as the court of first instance. Under clause 2 of subsection 2 of § 751 of the CCP, the court will set aside an arbitration award on the basis of a claim of a party or on its own motion if the court determines that the arbitration award is in conflict with Estonian public order or good manners (points 7-8 of the order).

7. Considering the aforementioned, the Chamber finds that the Supreme Court is not competent to hear the appeal of RLS Finance SA. In accordance with subsection 2 of § 11 of the Judicial Constitutional Review Procedure Act, the Chamber dismisses the appeal of RLS Finance SA and returns it to the persons who filed it.

Märt Rask, Tõnu Anton, Eerik Kergandberg, Lea Laarmaa, Jaak Luik

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