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Home > Constitutional judgment 3-4-1-10-05

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RULING OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

No. of the case	3-4-1-10-05
Date of judgment	13 May 2005
Composition of court	Chairman Märt Rask, members Tõnu Anton, Eerik Kergandberg, Lea Kivi, Ants Kull
Court Case	Petition of sworn advocate Aadu Luberg to declare the continuing of judicial procedure in the criminal proceeding against Mati Kadak unconstitutional
Hearing	Written proceeding
DECISION	To dismiss the petition.

FACTS AND COURSE OF PROCEEDING

1. A criminal case No 1-2442/04 is pending before Tallinn City Court, in which Mati Kadak is being criminally prosecuted.
2. On 30 May 2005 sworn advocate Aadu Luberg, criminal defence counsel of M. Kadak, filed a petition with the Constitutional Review Chamber of the Supreme Court requesting that the further proceeding of criminal matter of M. Kadak in Tallinn City Court be declared unconstitutional, because the continuation of the proceedings violates M. Kadak's right under § 23(3) of the Constitution.

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

3. The criminal defence counsel of M. Kadak has filed a petition requesting that the allegedly unconstitutional criminal proceedings against the person being defended by him be terminated. His petition is based on the ruling of the Constitutional Review Chamber of the Supreme Court of 23 March 2005, in matter No 3-4-1-6-05 [1] (RT III 2005, 11, 104), in which it was argued that an appeal filed directly with the Supreme Court may be heard if the person lacks other effective means to request that a court review the alleged violation of fundamental rights.
4. The criminal defence counsel points out that Tallinn City Court had dismissed the application for the termination of the proceedings. Consequently, M. Kadak has had a possibility to request that a court review the possible violation of his fundamental rights and that the court has done so. Upon dismissing the application Tallinn City Court found that the continuation of the judicial procedure will not violate the fundamental rights of M. Kadak. Neither the Acts regulating judicial procedure nor the Constitution entitle a person, if he or she does not agree with the opinion of a court, to directly file an appeal with the Constitutional Review Chamber of the Supreme Court.

5. As in the pending criminal proceedings M. Kadak and his criminal defence counsel have had and still have sufficiently effective possibilities to request for judicial review of alleged violation of fundamental rights, the Supreme Court has no ground to hear the petition on its merits. That is why the Constitutional Review Chamber shall dismiss the petition of A. Luberg on the basis of § 11(2) of the Constitutional Review Court Procedure Act.

Märt Rask, Tõnu Anton, Eerik Kergandberg, Lea Kivi, Ants Kull

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[1] <http://www.nc.ee/english/const/2005/3-4-1-6-05.htm>