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RULING OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

No. of the case	3-4-1-6-05
Date of decision	23 March 2004
Composition of court	Chairman Märt Rask, members Tõnu Anton, Eerik Kergandberg, Lea Kivi, Ants Kull
Court case	Petition of Mart Susi to declare § 5 of the Code of Criminal Procedure [of 1961; repealed] and § 199 of the valid Code of Criminal Procedure partially unconstitutional.
Court hearing	Written proceeding
Decision	To dismiss the petition of Mart Susi

FACTS AND COURSE OF PROCEEDING

1. At present, criminal case no. 1-461/04 (police file no. 03737000008) is pending before the Harju County Court, with Mart Susi as one of the persons prosecuted.
2. On 23 February Mart Susi filed a petition with the Supreme Court requesting the following:
 1. to declare that § 5 of the Code of Criminal Procedure (in the wording in force as of 1 January until 30 June 2004; now repealed) and § 199 of the presently valid Code of Criminal Procedure are in conflict with § 11 and the second sentence of § 12(1) of the Constitution, to the extent that the provisions do not contain a possibility to terminate a criminal proceeding if, in the course of the same proceeding a violation of fundamental rights of the same person has been committed and the violation can not be eliminated because at the time of commission of the violation the laws on criminal procedure did not provide for a regulation enabling to eliminate the violation through restoration of previous situation;
 2. to terminate the proceeding of criminal case no. 03737000008.

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

3. M. Susi has filed an individual complaint with the Supreme Court, petitioning for the constitutional review of the previously valid and presently valid Codes of Criminal Procedure, which allegedly violate his fundamental rights.
4. The Constitutional Review Chamber of the Supreme Court points out that pursuant to the Constitutional Review Court Procedure Act (hereinafter “the CRCPA”) the possibilities of filing direct individual

complaints with the Supreme Court are restricted. Thus, a person whose rights are violated by a resolution of the Riigikogu or the Board of Riigikogu or of the President of the Republic, may contest such resolution in the Supreme Court (§§ 16 – 18 of the CRCPA). A petition against a decision or an act of an electoral committee may be filed by a political party, election coalition or an individual (§ 37 of the CRCPA). The Constitutional Review Court Procedure Act does contain an *expressis verbis* provision enabling to file individual complaints for the review of constitutionality of legislation of general application.

At the same time, the Supreme Court *en banc* has repeatedly pointed out, on the basis of §§ 13, 14 and 15 of the Constitution and the application practice of the European Convention for the Protection of Human Rights and Fundamental Freedoms, that the Supreme Court may refuse to hear a petition of a person on its merits only if the person has other effective possibilities for exercising the right of recourse to the courts, guaranteed by § 15 of the Constitution (see judgments of the Supreme Court *en banc* of 17 March 2003 in matter no. 3-1-3-10-02 – RT III 2003, 10, 95, paragraph 17; of 6 January 2004 in matter no. 3-1-3-13-03 – RT III 2004, 4, 36, paragraph 32; 6 January 2004 in matter no. 3-3-2-1-04 – RT III 2004, 4, 37, paragraph 26).

5. On the basis of the aforesaid, the hearing of M. Susi's petition by the Supreme Court shall depend on whether there are any other effective remedies available to the petitioner to request that a court review the alleged violation of his fundamental rights. That is why the Chamber shall now analyse the possible channels of judicial complaint available to M. Susi for the review of the alleged violation of his fundamental rights.

6. Currently, the petitioner has a possibility to file his request – to declare § 5 of the Code of Criminal Procedure [of 1961; repealed] and § 199 of the valid Code of Criminal Procedure unconstitutional and to terminate, for that reason, the proceeding of the criminal matter – to the court hearing the criminal matter. Pursuant to § 15(2) of the Constitution, the courts shall observe the Constitution and shall declare unconstitutional any law, other legislation or procedure which violates the rights and freedoms provided by the Constitution or which is otherwise in conflict with the Constitution. § 152(1) of the Constitution establishes that the court shall not apply any law or other legislation that is in conflict with the Constitution. On the basis of these provisions, the court hearing the criminal matter, if it agrees with the opinion of the petitioner, can refuse to apply the legal regulation preventing the termination of the criminal proceeding, and can terminate the criminal proceeding against M. Susi. On the basis of such a judgment a constitutional review proceeding is initiated in the Supreme Court (§ 152(2) of the Constitution; § 4(3) of the CRCPA). If the court hearing the criminal matter should refuse to satisfy the request, the petitioner may request in the appellate proceedings – and finally, in the cassation proceedings – that the constitutional review be initiated.

7. The Chamber is of the opinion that the described procedure guarantees sufficiently effective means for M. Susi for judicial review of the alleged violation of his fundamental rights. On the basis of the aforesaid, the opinion of the petitioner that currently he has no other means for the protection of his fundamental rights but the recourse to the Supreme Court, is erroneous. Thus, the petition of M. Susi is not permissible and the Supreme Court has no ground to hear it on the merits. That is why the petition of M. Susi – to declare § 5 of the Code of Criminal Procedure [of 1961; repealed] and § 199 of the valid Code of Criminal Procedure unconstitutional and to terminate the proceeding of the criminal matter – shall be dismissed.

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