Constitutional Circuit of the UAE Federal Supreme Court Re-Opens Avenues for Appealing Against Court Seizure Orders / Garnishments

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Background

The Executive Regulations to the UAE Civil Procedures Law that came into effect in early 2019 amended the right of persons to appeal to seizure orders limiting the right to only the distrainee (the debtor whom the order is issued against).

Prior to this amendment, the distrainee, the judgment creditor, and any concerned person had the right to appeal against a seizure order.

In May of 2019, a creditor applied to the Dubai Courts to seize a performance bond held by the debtor.

The application was rejected.

The creditor appealed the rejection and in July 2019 the Dubai Courts turned down the appeal on the basis that Article 114(3) of the Executive Regulations to the Civil Procedures Law limits appeals against seizure orders to the distrainee (the debtor) only.

The creditor argued that Article 114(3) is unconstitutional pursuant to Articles 14, 25 and 41 of the UAE Federal Constitution and requested the Dubai Court of Appeals to grant leave to file a constitutional case before the Constitutional

Circuit of the Federal Supreme Court for review of the constitutionality of Article 114(3).

The Dubai Court of Appeals found merit in the request and granted the creditor leave to file a constitutional lawsuit before the Constitutional Circuit of the Federal Supreme Court, which the creditor proceeded to do so in September of 2019.

Defense arguing the constitutionality of Article 114(3) was submitted by the Cabinet of Ministers and the Minister of Justice, represented by the State Disputes Department of the Ministry of Justice, and the Dubai Legal Affairs Department on behalf of the President of the Dubai Primary Court.

Decision

The Constitutional Circuit of the Federal Supreme Court rejected the argument that Article 114(3) is unconstitutional but stated that creditors and any concerned persons may rely on Article 60(1) of the Executive Regulations to the Civil Procedures Law to appeal against seizure orders.

Article 60(1) states that a petitioner whose request has been rejected, the person against whom the order has been issued, and any concerned persons, have the right to file a grievance against said order unless the law or the Executive Regulations stipulate otherwise.

Prior to this ruling by the Constitutional Circuit, it was understood that Article 114(3) was a carve-out provision that applied the restriction provided for in Article 60(1); "*…unless the law or the Executive Regulations stipulate otherwise*…".

The Constitutional Circuit, however, ruled that Article 114(3) is not a carve-out provision and creditors and concerned persons may rely on Article 60(1) to file appeals against seizure orders.

Constitutional Litigation (Brief)

In the UAE, filing a constitutional case directly before the Constitutional Circuit of the Federal Supreme Court is a right restricted to the federal and local government agencies only.

Private litigants may only file a constitutional case with the Constitutional Circuit if granted leave by a subject matter trial court in an on-going substantive case.

The basic principle is that a constitutional lawsuit is filed based on an existing substantive case before the trial court. In which a litigant argues the unconstitutionality of legislative text against the substantive dispute. If the trial court accepts the argument it authorizes the litigant to file a constitutional lawsuit. Alternatively, the trial court may of its own accord find that the text is unconstitutional and refer it to the Constitutional Circuit of the Federal Supreme Court for review.

However, this does not make the constitutional lawsuit a subordinate lawsuit, but rather a case that is separate from the subject matter dispute because it – the constitutional lawsuit – deals with a subject that differs from the merits of the substantive case.

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