Constitutional judgment 3-4-1-17-13

EN BANC

JUDGMENT
in the name of the Republic of Estonia

Case number	3-4-1-17-13
Date of judgment	21January 2014
Formation	Chairman: Priit Pikamäe; members: Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Lea Laarmaa, Jaak Luik, Ivo Pilving, Jüri Põld, Harri Salmann and Tambet Tampuu
Case	Review of the constitutionality of subsection 1 of § 56 of and Annex 1 to the State Fees Act (in the wording in force from 1 January 2009 to 31 December 2010) to the extent that a state fee of 35 000 Estonian kroons had to be paid on a statement of claim in a civil case with a value of more than 300 000 to 350 000 Estonian kroons.
Basis for procedure	Order of Pärnu County Court of 24 April 2013 in civil case no. 2-10-39828
Hearing	Written
OPERATIVE PART	**To dismiss the request of Pärnu County Court.**

FACTS AND COURSE OF PROCEDURE

1. On 18 August 2010, BEAMEST OÜ (claimant) filed a statement of claim with Pärnu County Court against osaühing /*private limited company*/ DeRossi (defendant) in the claim for debt and interest on arrears, asking that the Court order the defendant to pay the principal amounting to 336 380 Estonian kroons (21 498 euros and 60 cents) and collateral amounting to 7044 Estonian kroons (450 euros 19 cents). The claimant

performed construction work for the defendant on the basis of a subcontract, for which the defendant refused to pay in part. On 16 August 2010, the claimant paid a state fee of 35 000 Estonian kroons (2236 euros and 91 cents) on the statement of claim with a value of 336 380 Estonian kroons on the basis of subsection 1 of § 56 of and Annex 1 to the State Fees Act (SFA) in force at that time.

2. On 6 February 2013, the parties filed with Pärnu County Court a compromise contract made between the claimant and the defendant and asked to approve it and terminate the civil proceedings. In the text of the compromise contract, the claimant requested that subsection 1 of § 56 (in the request erroneously § 57) of and Annex 1 to the SFA in force at the moment of filing the statement of claim be declared in conflict with the Constitution to the extent that these obliged the claimant to pay a state fee of 35 000 Estonian kroons on the statement of claim with a value of 336 380 Estonian kroons and that the state fee rate of 750 euros applicable in the event of the same amount of claim upon filing a statement of claim outside e-file since 1 July 2012 be determined as the constitutional state fee. On the basis of the Code of Civil Procedure, if proceedings are terminated due to reaching a compromise, one-half of the paid state fee, i.e. in the event of a constitutional fee 375 euros, will be refunded. As the claimant paid 2236 euros 90 cents (actually 2236 euros 91 cents) as the fee, it asked to refund in total 1861 euros 90 cents.

3. By an order of 24 April 2013 in civil case no. 2-10-39828, Pärnu County Court approved the compromise reached by the claimant and the defendant and terminated the civil proceedings. By another order made on the same day, i.e. on 24 April 2013, in civil case no. 2-10-39828, Pärnu County Court granted in part the claimant's request for a refund of the state fee and declared to be in conflict with the Constitution and refused to apply subsection 1 of § 56 of and Annex 1 to the State Fees Act to the extent that a state fee of 35 000 Estonian kroons had to be paid on a statement of claim in a civil case with a value of more than 300 000 to 350 000 Estonian kroons. The County Court determined the state fee payable on the claim to be 900 euros and refunded 1786 euros 91 cents of the state fee paid upon filing the statement of claim. The order of Pärnu County Court reached the Supreme Court on 24 April 2013.

4. By an order of 21 June 2013, the Constitutional Review Chamber of the Supreme Court placed the constitutional review case no. 3-4-1-17-13 initiated by an order of Pärnu County Court of 24 April 2013 for adjudication before the Supreme Court *en banc* on the basis of subsection 3 of § 3 of the Judicial Constitutional Review Procedure Act (JCRPA). The state fee rate contested in this constitutional review case is lower than the state fee rate that has earlier been considered constitutional in the Civil Chamber and therefore the Constitutional Review Chamber of the Supreme Court considered it necessary to have the case adjudicated in the Supreme Court *en banc*.

5. According to an order of the Chamber, from 1 January 2009 to 30 June 2012 the state fees were in force in principle at the same rate, regardless of the currency in which they were presented. Thus, the rates of the fees in different wordings of the State Fees Act are comparable. By a judgment of 11 April 2013 in case no. 3-4-1-31-12, the Constitutional Review Chamber of the Supreme Court declared to be in conflict with the Constitution a significantly higher rate, i.e. 3195 euros 58 cents (approx. 50 000 Estonian kroons), which was in force from 1 January 2011 to 30 June 2012, than the currently contested state fee rate. This is the lowest state fee rate that has been declared to be in conflict with the Constitution in the Supreme Court until today. On 19 December 2012, the Civil Chamber of the Supreme Court held in point 13 of an order made in case no. 3-2-1-163-12 that subsections 1 and 22 of § 57 of and Annex 1 to the SFA in force at the time of lodging the appeal (26 March 2012) are not in conflict with the Constitution to the extent following from which a state fee of 2556 euros 46 cents (approx. 40 000 Estonian kroons) had to be paid on an appeal with a value of more than 22 369 euros 7 cents to 25 564 euros 65 cents (approx. 350 000 to 400 000 Estonian kroons).

ORDER OF COUNTY COURT

6. The County Court maintained that, thanks to reaching the compromise approved by the Court, the claimant has the right, on the basis of clause 1 of subsection 2 of § 150 of the Code of Civil Procedure (CCP), to receive a refund of one-half of the state fee paid in the proceedings. Based on clause 1 of subsection 1 and subsection 4 of § 150 of the CCP, clause 1 of subsection 1 of § 15 of the SFA and the case

law of the Supreme Court, the claimant has the right to request a refund of the state fee overpaid upon filing a statement of claim. The right of recourse to the court may also be affected by the state fee that has already been paid.

7. In the identification of unconstitutionality of the paid state fee, Pärnu County Court was guided by the case law of the Supreme Court concerning state fees. Access to the administration of justice must actually be ensured, but a state fee at the respective rate is disproportionately prejudicial to the right of recourse to the court. A state fee of 35 000 Estonian kroons is not a necessary measure for achieving the purposes of procedural economy or participation in bearing the costs of administration of justice. Relying on the data of 2010, the Court held that the contested state fee exceeded the average anticipated cost of civil proceedings in the County Court more than seven times. A significantly lower state fee would also in all probability cover the costs of the administration of justice that have risen by now, but it would be less cumbersome for a person who wishes to have recourse to the court. On 7 May 2012, the Supreme Court has noted in point 47 of the judgment made in case no. 3-4-1-7-12 that the draft State Fees Act Amendment Act that was being read by the *Riigikogu* (206 SE, XII composition of the *Riigikogu*) considered it possible to achieve procedural economy also with lower state fees. According to Annex 1 to the SFA in force from 1 July 2012 and enforced with the aforesaid amendment to the Act, a fee payable on a claim with a value of 336 380 Estonian kroons (21 498 euros 60 cents) would be 750 or 900 euros, i.e. approx. 2.5 times less than the claimant paid.

8. In the determination of the constitutional state fee, the County Court was guided by the wording of the State Fees Act in force from 1 July 2012 and determined the constitutional state fee payable on the claim to be 900 euros. As the claimant did not lodge a statement of claim through the e-file system, the full rate of the state fee must be applied. When filing a statement of claim, the claimant paid a state fee of 2236 euros 91 cents (35 000 Estonian kroons). Thus, the claimant had to be refunded, on the basis of clause 1 of subsection 1 of § 150 of the CCP, the state fee of 1336 euros 91 cents overpaid due to unconstitutionality and, on the basis of clause 1 of subsection 2 of § 150 of the CCP, 450 euros due to reaching a compromise, i.e. in total 1786 euros 91 cents.

OPINIONS OF PARTIES
9.–19. [Not translated.]

PROVISIONS NOT APPLIED
20. Subsection 1 of § 56 “Review of statements of claim, petitions and appeals” of the State Fees Act (RT I 2006, 58, 439; 22.12.2010, 1):
“Upon the filing of a statement of claim, a state fee shall be paid on the basis of the value of the claim pursuant to Annex 1 to this Act or in a fixed amount.”

21. An extract from Annex 1 to the State Fees Act “Full state fee rates for filing of petitions in civil proceedings (in Estonian kroons)” (from 1 January 2009 to 31 December 2010):

Cost of civil case up to (inclusive)	Full state fee rate
300 000	[---]
350 000	35 000

OPINION OF COURT *EN BANC*
22. First, the Court *en banc* will find relevant provisions, the affected fundamental right and purposes of the infringement (I) and thereafter the Court *en banc* will assess the proportionality of the infringement (II).

I

23. The provision, whose constitutionality the Supreme Court assesses, must be relevant to the adjudication

of the main dispute (subsection 2 of § 14 of the JCRPA).

24. By an order of 24 April 2013 in civil case no. 2-10-39828, Pärnu County Court declared the disputed provisions of the State Fees Act to be in conflict with the Constitution and refused to apply these, hearing and granting the claimant's request of 6 February 2013 for refunding the state fee overpaid on the statement of claim and for declaring the applied state fee rate to be in conflict with the Constitution. On 18 August 2010, the claimant filed a statement of claim with Pärnu County Court and paid a state fee of 35 000 Estonian kroons (2236 euros 91 cents) on the value of the claim 336 380 Estonian kroons (21 498 euros and 60 cents). Pärnu County Court terminated proceedings in civil case no. 2-10-39828 by its order of 24 April 2013 with which it approved the compromise made by the claimant and the defendant.

25. The Court *en banc* holds that, at the time the claimant's request was adjudicated in Pärnu County Court, subsection 1 of § 56 of and Annex 1 to the wording of the SFA in force from 1 January 2009 to 31 December 2010 included relevant provisions to the extent that provided that a state fee of 35 000 Estonian kroons had to be paid on a statement of claim with a value of the claim more than 300 000 to 350 000 Estonian kroons. When adjudicating the claimant's request, the County Court had to establish whether the paid state fee is constitutional (subsection 2 of § 15 and subsection 1 of § 152 of the Constitution). Upon adjudication of the request for refund of the overpaid state fee, in the event of the unconstitutionality of the disputed provisions the County Court should have made a different decision on the request than in the event of the constitutionality of the provisions (see also the judgment of the Supreme Court *en banc* of 28 October 2002 in case no. 3-4-1-5-02, point 15).

26. An infringement of a fundamental right is any unfavourable impact on its protection zone (see the judgment of the Constitutional Review Chamber of the Supreme Court of 6 March 2002 in case no. 3-4-1-1-02, point 12).

27. The obligation to pay a state fee on a claim and the rate of the state fee affect first and foremost everyone's fundamental right of recourse to the court provided for in subsection 1 of § 15 of the Constitution (the judgment of the Supreme Court *en banc* of 6 March 2012 in case no. 3-2-1-67-11, point 22.1), i.e. the fundamental right that has to ensure judicial protection of rights without any gaps (the order of the Supreme Court *en banc* of 22 December 2000 in case no. 3-3-1-38-00, point 15).

28. As a justification for the restriction of the fundamental right provided for in the first sentence of subsection 1 of § 15 of the Constitution, only other fundamental rights or constitutional values can be considered (the judgment of the Supreme Court *en banc* of 16 May 2008 in case no. 3-1-1-88-07, point 43, and the case law referred to therein).

29. Subsection 1 of § 4 of the SFA provides the cost principle of state fee, according to which the state fee rate is established based on the costs related to the taking of the step. The Supreme Court *en banc* held in its judgment of 12 April 2011 in case no. 3-2-1-62-10 (point 44) that in civil proceedings the primary purpose of the state fee is to ensure that a party to a step compensate either in full or in part for the costs of the public step taken by the state.

30. Under subsection 2 of § 4 of the SFA, based on the purpose of a step, the benefits received as a result of the step, or overriding public interest and, above all, based on social or economic policy considerations, the rate of a state fee may be established on a different basis than the cost principle. The Supreme Court *en banc* has also maintained that the purpose of the state fee is also to prevent filing unfounded and malicious claims, i.e. procedural economy (see the judgment of the Court *en banc* in case no. 3-2-1-62-10, points 44 and 45).

31. Thus, the Supreme Court has considered procedural economy and participation of parties to the proceedings in bearing the costs of the administration of justice in civil proceedings as legitimate purposes of state fees in contentious proceedings. The Court *en banc* stands by the opinion. Next, the Court *en banc* will verify the proportionality of the state fee rate of 35 000 Estonian kroons for these purposes.

II

32. The Court verifies compliance with the principle of proportionality in succession at three levels – at first the appropriateness of the measure, then the necessity and, if necessary, also proportionality in the narrower sense, i.e. reasonableness (see further the judgment of the Supreme Court of 6 March 2002 in constitutional review case no. 3-4-1-1-02, point 15).

33. An appropriate measure is the one that promotes the achievement of the purpose of the restriction and, from the point of view of appropriateness, an undisputable disproportionate measure is one that does not promote the achievement of the purpose of the restriction in any event. The disputed state fee is, without doubt, an appropriate measure for the achievement of the purpose of procedural economy. The requirement for payment of a state fee of 35 000 Estonian kroons on a statement of claim with the amount of claim at 336 380 Estonian kroons (i.e. the range of the cost of civil case in the table in Annex 1 to the SFA more than 300 000 Estonian kroons to 350 000 Estonian kroons) could, among other things, prevent the filing of unfounded and malicious claims. By restricting the right of recourse to the court, the number of claims to be filed with courts will presumably fall and the capability of the court system to adjudicate the received civil cases more quickly will increase. Furthermore, a state fee in such an amount covered presumably the average cost of the administration of justice in the county court from 2010 to 2012 (cf. the judgment of the Supreme Court *en banc* of 6 March 2012 in case no. 3-2-1-67-11, point 26.2 about the cost of the administration of justice in the county court in 2010) and is thus also an appropriate measure for the purpose of the participation of parties to the proceedings in bearing the costs of administration of justice.

34. A measure is necessary if the purpose cannot be achieved with another measure that encumbers a person less and is at least as effective as the first one. The contested state fee rate was a necessary measure for achieving the purpose of procedural economy and participation in bearing the costs of the administration of justice. The higher the state fee rate, the higher the probability that there is an alternative measure that helps achieve the legitimate purpose as efficiently, but which would thereby encumber the person less. In the light of the above, according to the Court *en banc*, in the event of a state fee of 35 000 Estonian kroons it is not unambiguously clear any more that this is a state fee that would be, due to its size alone, an unnecessary measure for achieving the purpose of procedural economy and participation in bearing the costs of the administration of justice. Especially when compared to the state fee rates of civil proceedings verified in earlier cases, which were significantly higher than in the present case (see point 35 of the judgment, according to which the Supreme Court has declared state fee rates of approx. 50 000 Estonian kroons to 1 154 783 Estonian kroons and 23 cents to be in conflict with the Constitution). As it is not unambiguously clear that there exists another equally effective measure that would encumber the person less, but which would help achieve legitimate purposes of the state fee as efficiently, a state fee of 35 000 Estonian kroons can be considered a necessary measure.

35. To decide on the reasonableness of a measure, the extent and intensity of the infringement of the fundamental right on one hand and the importance of the purpose on the other must be weighed. The Supreme Court has earlier, from 1 January 2009 to 30 June 2012, been engaged in the review of the constitutionality of extremely large state fees. E.g. in case no. 3-2-1-62-10 of the Court *en banc* the constitutionality of a state fee of 945 000 Estonian kroons and in case no. 3-2-1-67-11 the constitutionality of a state fee of 220 000 Estonian kroons had been contested, in case no. 3-4-1-17-11 of the Constitutional Review Chamber the constitutionality of a state fee of 73 804 euros 10 cents (1 154 783 Estonian kroons 23 cents), in case no. 3-4-1-15-13 the constitutionality of a state fee of 85 000 kroons and in case no. 3-4-1-31-12 the constitutionality of a state fee of 3195 euros 58 cents (approx. 50 000 Estonian kroons) had been contested.

36. Very large rates of state fees for civil cases have justified their constitutional review, where the clear disproportionality of the contested state fee rate for legitimate purposes has become evident in comparison with the average gross monthly salary rate and the minimum salary rate in Estonia as well as in comparison with the average estimated cost of one civil case in court (see the judgment of the Supreme Court *en banc* of 6 March 2012 in case no. 3-2-1-67-11, points 26.2 and 27.2; the judgment of the Constitutional Review

Chamber of the Supreme Court of 18 October 2012 in case no. 3-4-1-15-12, points 32 and 35; the judgment of 15 December 2009 in case no. 3-4-1-25-09, point 27).

37. The Court *en banc* is of the opinion that in a situation, where the contested state fee rate is considerably lower than those set out in the last but one point, this cannot be considered disproportionate in the present society in Estonia solely on the basis of the average gross monthly salary, the minimum salary rate and the average estimated cost of one civil case in Estonia. The lower the state fee rate, the lower the extent and intensity of interference in fundamental rights. In such a situation the constitutionality of the state fee rate must be assessed based on how this affects a party to the proceedings on whom the obligation to pay the state fee was incumbent (see also the judgment of the Constitutional Review Chamber of the Supreme Court of 17 July 2009 in case no. 3-4-1-6-09, points 21-23). The European Court of Human Rights has also held in several decisions that the requirement to pay fees to civil courts in connection with claims they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible per se with paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, the amount of the fees assessed in light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed, are factors which are material in determining whether or not a person enjoyed that right of access (*Kreuz v. Poland*, application no. 28249/95, point 60); *Teltronic-Catv v. Poland*, application no. 48140/99, point 48, etc.). The Court *en banc* is being guided by the aforesaid also when adjudicating the present case.

38. First, the Court *en banc* takes into account the fact that after payment of the state fee the claimant has been able to participate in court proceedings in the county court and a judicial decision (compromise approved by the court) has also been made in respect of it. Thus, in order to protect its rights, the claimant could have recourse to the court and enjoy fair court proceedings. Only immediately before the conclusion of the proceedings it has addressed a court with a request for a refund of the overpaid state fee (cf. the judgment of the Supreme Court *en banc*of 28 February 2013 in case no. 3-4-1-13-12, points 36 and 43). Thus, the infringement of the right of recourse to the court is of lower intensity. The claimant had an efficient opportunity to protect its fundamental rights in court.

39. Furthermore, it is important in the present case that, due to reaching a compromise with the other party to the court proceedings, on the basis of clause 1 of subsection 2 of § 150 of the CCP the claimant had the right to a refund of 50% of the state fee paid in the proceedings. On that basis the claimant was refunded one-half of the constitutional state fee ordered by the court (50% of 900 euros, i.e. 450 euros). Thus, in the event that a state fee of 35 000 Estonian kroons is to be considered constitutional, the claimant would bear only a fee of 17 500 Estonian kroons if clause 1 of subsection 2 of § 150 of the CCP is applied.

40. In the assessment of the proportionality of the state fee of 35 000 Estonian kroons, the Court *en banc* also takes into account the person of the claimant and the nature of the legal dispute as well as the object of the statement of claim (cf. the judgment of the Constitutional Review Chamber of the Supreme Court of 15 December 2009 in case no. 3-4-1-25-09, point 26). The claimant (a company) performed construction work for the defendant on the basis of a subcontract, for which the defendant refused to pay in part. Thus, in the civil case the objective was to settle a dispute that arose in the course of ordinary economic activities between two legal persons in private law. The object of the statement of claim was the receipt of proprietary benefit.

41. In the present civil case the claimant is a legal person. Although the European Court of Human Rights is of the opinion that the argument that "a commercial entity should have sufficient means to pay a court fee" is hypothetical (see *Paykar Yev Haghtanak Ltd v. Armenia*, application no. 21638/03, point 49), this is, on the other hand, balanced by the obligation of persons who have a proprietary interest in the issue, such as members or shareholders of the legal person, to pay the state fee also at their own cost. The European Court of Human Rights has not precluded the requirement imposed on shareholders for making additional contributions for payment of the state fee ordered from the company if they were capable of that (cf. *Teltronic-Catv v. Poland*, point 59).

42. Furthermore, the Court *en banc* is of the opinion that, when filing a statement of claim, the claimant did not use the opportunity laid down in subsection 31 of § 181 of the CCP to apply for procedural assistance in the form of payment of the state fee of 35 000 Estonian kroons in instalments (the opportunity also applied to legal persons, see the order of the Civil Chamber of the Supreme Court of 9 November 2010 in case no. 3-2-1-95-10, point 9).

43. In light of the above, according to the Court *en banc*, in this case the state fee rate is proportional. This state fee rate does not reach the rate that has been established in the interests of procedural economy and is considered constitutional. The Court *en banc* has held earlier that the amount of the state fee may not be of a killing nature (the judgment of the Supreme Court *en banc* in case no. 3-2-1-62-10, point 48.3). The Court *en banc* is of the opinion that the state fee rate payable on a statement of claim in this case can be considered in a dispute arising from economic relations of a legal person in private law as one that must be deemed as a reasonable infringement of the right of recourse to the court. In the present case the limits of discretion granted to the Legislature have clearly been exceeded (subsection 2 of § 4 of the SFA). Thus, a state fee of 35 000 Estonian kroons payable on a claim with a value of more than 300 000 Estonian kroons to 350 000 Estonian kroons as an infringement of the fundamental right of recourse to the court as arising from the first sentence of subsection 1 of § 15 of the Constitution is proportionate.

44. The Supreme Court dismisses the request of Pärnu County Court on the basis of clause 6 of subsection 1 of § 15 of the JCRPA.

45. The Court *en banc* also notes the following. By an order of 24 April 2013, Harju County Court has obliged the State Shared Service Centre to refund to the claimant 1786 euros 91 cents. The State Shared Service Centre executed the order on 21 May 2013. In accordance with the present judgment of the Court *en banc*, the state fee in an amount of 35 000 Estonian kroons (2236 euros 91 cents) paid by the claimant is constitutional. A compromise has been reached in the civil case and in such an event one-half of the state fee paid in the proceedings shall be refunded in accordance with clause 1 of subsection 2 of § 150 of the CCP. Thus, the claimant should be refunded 17 500 Estonian kroons (1118 euros 45 cents). The County Court has refunded 668 euros 46 cents more than prescribed (1786.91 – 1118.45 = 668.46). On the basis of subsections 1 and 2 of § 179 of the CCP, a person may be ordered to pay an underpaid state fee, *inter alia*, by the county court which adjudicated the case.

Dissenting opinion of Justices Tõnu Anton, Eerik Kergandberg, Hannes Kiris, Indrek Koolmeister and Ivo Pilving on the Supreme Court *en banc* judgment of 21 January 2014 in case no. 3-4-1-17-13

1. The Supreme Court *en banc* decided that it is constitutional and proportional to charge a state fee of 35 000 Estonian kroons on a statement of claim in a civil case with a value of 300 000 to 350 000 Estonian kroons. We disagree with this position.

2. The majority of the Court *en banc* considered such a high state fee rate necessary for two purposes: procedural economy and participation in bearing the costs of the administration of justice. Unlike that, set out in point 34 of the judgment of the Court *en banc*, we hold that in order to achieve both purposes, a significantly lower state fee – an amount that does not exceed the estimated cost to be incurred by the state with regard to hearing the civil case in the county court – is sufficient enough.

3. The state fee within the limits of the costs to be incurred by the state due to the adjudication of the civil case will achieve the purpose of participation in bearing the costs of the administration of justice within 100%. If any purpose has already been achieved in full by a less cumbersome measure, it is not possible any more to justify the necessity for a more cumbersome measure with a statement that a more cumbersome measure is more effective.

4. A constitutional purpose is such that a person participates in bearing the costs related to their own civil

case. Thereby, the Legislature has extensive freedom of action in choosing the cost accounting approach to be taken as a basis for charging fees. It is also constitutional if the Legislature establishes state fee rates on the basis of average costs of the adjudication of all civil cases generally or civil cases of a respective type differentially as the calculation of actual costs caused by hearing each single case to one cent accuracy would be unreasonably complicated, if not impossible. As the currently disputed fee is applicable to all types of civil cases in the event of which no different rate has been established, there is a reason to proceed from the average estimated cost of all civil cases in the first court instance. During the period of applicability of the disputed regulation, i.e. in 2010, this indicator was 4459 Estonian kroons 28 cents (the judgment of the Supreme Court *en banc* of 6 March 2012 in case no. 3-2-1-67-11, point 26.2). The fee charged in the present case does not exceed the average cost not to some extent but more than seven times.

5. There is no justification for a situation where a person has, when having recourse to a court for the protection of their rights, to contribute more generally to the state budget revenue in addition to compensating for their own estimated costs related to the adjudication of the case. However, charging a state fee in the extent that is several times higher than the average cost of cases of the respective type will, on the whole, produce exactly this result (provided that the court does not identify that in a specific case the actual cost exceeded the estimated one). It must be admitted that in many civil cases it is not possible for the state to charge from parties to proceedings any compensation for estimated or actual cost that the adjudication of a case causes to the state (the need to provide procedural assistance, ordering the payment of costs in full in cases of low value of the claim need not be reasonable, etc.). This will create a temptation for cross-subsidisation of civil cases – i.e. to charge in cases of higher value of the claim a fee that is larger than the cost of adjudication thereof in order for it to cover all the costs of the civil cases where the state cannot charge, for some reason, full compensation for the costs from the parties to the proceedings. However, such a cross-subsidisation is still not acceptable on closer examination.

The restriction of the first sentence of subsection 1 of § 15 of the Constitution as the fundamental right without reservation can be justified only by the Constitution itself. No principle or value that would require that the court system to be self-supporting arises from the Constitution. On the contrary, §§ 14 and 146 place responsibility for ensuring the protection of rights and the administration of justice on the state, not on the applicant for legal protection.

6. A fee higher than the estimated cost of a case cannot be charged from the person who has recourse to a court purely for the purpose that the money to be received from the fees would be spent on the functioning of the court system as little as possible. Activities of the state must, in general, be financed from charges, by distributing between as many persons (taxpayers) as possible the financial burden caused to the private sphere by obtaining the state budget revenue. Instead of general taxation, the state may file a claim for a fee with a specific person only if the person receives a consideration for the fee – i.e. the activity of the state takes place in the interests of the person, this has been caused by the person’s request or activities or if the person has, for another reason, a closer connection with the activities of the state than the taxpayers generally have. Otherwise the state will impose an arbitrary obligation on the fee-payer, treating them unjustifiably more unfavourably compared to other taxpayers.

7. To ensure procedural economy, there is also no need to discourage persons who have recourse to a court with ill-considered statements with a higher state fee than the estimated cost of the case. Repelling of cases cannot be a purpose of its own according to the Constitution. Discouragement can be necessary in order to keep ill-considered statements from encumbering the court system too much and thus wasting resources that are required for the efficient functioning of the court system. If a state fee covers the costs of the adjudication of a case anyway, filing ill-considered statements cannot damage the capacity of the court system. This is so for the reasons that in the described event the persons compensate the state for the resource costs that the adjudication of the statements entail.

Thus, the purpose of procedural economy is also achieved in full with a state fee rate that is in compliance with the estimated cost of the civil case, due to which the considerably higher fee under review in this case cannot be considered as a necessary one in pursuing the purpose.
