Constitutional judgment 3-2-1-140-12

SUPREME COURT

EN BANC

ORDER

No. of the case	3-2-1-140-12
Date of order	Tartu, 2 April 2013
Composition of court	Chairman Märt Rask, 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, Priit Pikamäe, Ivo Pilving, Jüri Põld, Harri Salmann and Tambet Tampuu
Court Case	Lembit Lambing's request for a refund of the state fee.
Parties to the proceedings and their representatives in the Supreme Court	Lembit Lambing (personal identification code XXX), representative: Priit Lätt, attorney-at-law (*vandeadvokaat*), The *Riigikogu* (via the Constitutional Committee), Chancellor of Justice, Minister of Justice
Date of Hearing	22 January 2013, written hearing
DECISION	**To dismiss Lembit Lambing's request for a refund of the state fee.**

FACTS AND COURSE OF PROCEDURE

1. On 8 April 2009, Lembit Lambing (claimant) filed a statement of claim with Harju County Court (the court of first instance) against Swedbank Liising Aktsiaselts (defendant), asking that the court order the defendant to pay 2 500 000 Estonian kroons and interest in the amount of 557 491 Estonian kroons and 90

cents.

2. By its judgment dated 22 December 2009, the court of first instance rejected the claim. By a judgment of 28 May 2010, Tallinn Circuit Court (the court of appeal) also rejected the claimant's appeal dated 21 January 2010 and upheld the judgment of the court of first instance. By its judgment of 1 December 2010 (civil case no. 3-2-1-109-10), the Supreme Court upheld the judgment of the court of appeal and rejected the claimant's appeal in cassation. The claimant was ordered to bear the procedural expenses in all instances.

3. By its order dated 26 January 2010, the court of appeal ordered the claimant to pay a state fee of 145 000 Estonian kroons on the appeal (Volume II, case file pp. 15-16). On 26 January 2010, Luule Lambing paid a state fee of 115 000 Estonian kroons (Volume II, case file p. 24) and, on 28 January 2010, Advokaadibüroo GLIMSTEDT OÜ (former business name: Advokaadibüroo Glimstedt Straus & Partnerid OÜ) paid 30 000 Estonian kroons (Volume II, case file p. 25) for the claimant.

4. On 28 January 2010, the claimant filed an objection with the court of appeal regarding the amount of the state fee, submitting that the correct amount is 115 000 Estonian kroons and requesting a refund of 30 000 Estonian kroons (Volume II, case file pp. 20-22). On 29 January 2010, the court of appeal dismissed the request for a refund of the fee (Volume II, case file p. 28). In the appeal in cassation lodged with the Supreme Court, the claimant also submitted that it paid 30 000 Estonian kroons more than prescribed on the appeal (Volume II, case file pp. 74-75). According to point 12 of the judgment of the Supreme Court dated 1 December 2010, the claimant can request a refund of the overpaid state fee from the court of appeal.

On 26 May 2011, Advokaadibüroo GLIMSTEDT OÜ submitted to the court of appeal a request seeking a refund of 30 000 Estonian kroons overpaid as the state fee on the appeal (Volume II, case file pp. 114-115). By an order dated 6 June 2011 the court of appeal refunded 30 000 Estonian kroons (1917 euros and 35 cents) to Advokaadibüroo GLIMSTEDT OÜ, because the state fee had been paid in excess (Volume II, case file pp. 120-121).

5. On 12 July 2012, the claimant filed with the Supreme Court a request to refund 3259 euros and 49 cents of the state fee paid in the appeal proceedings and transfer it to the current account of Advokaadibüroo GLIMSTEDT OÜ.

Upon requesting a refund of the state fee, the claimant relied on §§ 12 and 15 of the State Fees Act (SFA) and on § 150 of the Code of Civil Procedure (CCP). The claimant requested that subsections 1 and 19 of § 56 and the last sentence of Annex 1 to the SFA (in the wording in force from 1 January 2009 to 31 December 2010) be declared in conflict with the Constitution to the extent that the provisions stipulated that a state fee of 115 000 Estonian kroons had to be paid on an appeal in a civil case with a value of 2 000 000 to 2 500 000 Estonian kroons. The claimant submitted that the rate of the state fee on the basis of which he paid the state fee on the appeal was unconstitutional. Such a state fee affects the right of recourse to court provided for in subsection 1 of § 15 of the Constitution and the right to appeal against a decision of a court under subsection 5 of § 24 of the Constitution. The obligation to pay such a high state fee is also in conflict with § 32 of the Constitution.

The claimant submits that, upon determining the constitutional amount of the state fee, the state fee rates in force before 1 January 2009 must be applied. The state fee rate in force as of 31 December 2008 regarding lodging an appeal in a civil case with a value of 2 500 000 Estonian kroons was 64 000 Estonian kroons. 51 000 Estonian kroons (3259 euros and 49 cents) must be refunded to the claimant since the claimant paid a state fee of 115 000 Estonian kroons to lodge the appeal, but should have paid 64 000 Estonian kroons.

6. By an order dated 4 October 2012, the three-member panel of the Civil Chamber of the Supreme Court placed the case for adjudication before the full Civil Chamber.

7. By an order dated 21 November 2012, the full Civil Chamber placed the claimant's request before the Supreme Court *en banc* on the basis of clauses 2 and 3 of subsection 4 of § 19 and the first sentence of

subsection 1 of § 690 of the CCP and the second sentence of subsection 3 of § 3 of the Judicial Constitutional Review Procedure Act (JCRPA).

OPINIONS OF CIVIL CHAMBER ON APPLICATION OF LAW AND ISSUES RAISED

8. The Civil Chamber of the Supreme Court maintained that the claimant has the right to request a refund of the state fee under clause 1 of subsection 1 and subsection 4 of § 150 of the CCP, the first sentence of subsection 1 of § 12 and clause 1 of subsection 1 of § 15 of the SFA, and the Supreme Court is competent to adjudicate the request. The claimant filed the request within the prescribed time limit. The claimant paid the state fee on the appeal to the extent provided for in the SFA and will have the right to a refund of the paid fee only if the state fee rate is declared unconstitutional.

The members of the Chamber disagreed on whether the claimant can rely on the unconstitutionality of the fee after the judgment made in the case entered into force. The Chamber is of the opinion that the Court *en banc* must answer the question of whether and for how long following the payment of the state fee and termination of proceedings it is possible to rely on the unconstitutionality of the state fee paid.

If the Court holds that the assessment of the constitutionality of the state fee paid by the claimant is possible, the Court must also assess whether the rate of the state fee was in line with the Constitution. To this end, the Court must examine the constitutionality of subsections 1 and 19 of § 56 of and Annex 1 to the SFA in force before 1 January 2011 to the extent that the given provisions established the obligation to pay a state fee of 115 000 Estonian kroons upon lodging an appeal in a civil case with a value of 2 000 000 to 2 500 000 Estonian kroons.

The Chamber is unanimous that the obligation to pay a disproportionately high state fee may affect the fundamental right of ownership provided for in § 32 of the Constitution, given the size of the portion of the assets that the claimant had to give up to pay the state fee. In addition to the first payer of the fee, it may also affect the ownership right of other parties to the proceedings who may be ordered to pay the fee as procedural expenses based on the judicial decision. However, the Chamber is not unanimous as to whether there was an infringement of the fundamental right upon affecting the right.

The members of the Chamber also disagree on the issue of whether the payment of a disproportionately high state fee on an appeal can affect the fundamental right of appeal against a court judgment or order set out in subsection 5 of § 24 of the Constitution.

REASONS GIVEN BY PARTIES

9–12. [Omitted from this text.]

OPINION OF COURT EN BANC

13. First, the Court **en banc** will discuss general issues relating to adjudicating the request (I), thereafter the Court *en banc* will analyse the possibilities of reviewing the constitutionality of the contested provisions and adjudicate the request (II).

I

14. If the claimant has paid a higher-than-required state fee in the appeal proceedings, the claimant can demand that it be refunded under clause 1 of subsection 1 of the CCP as well as the first sentence of subsection 1 of § 12 and clause 1 of subsection 1 of § 15 of the SFA. Under subsection 4 of § 150 of the CCP, the claimant can apply for a refund of the state fee regardless of the fact that third parties paid it for the claimant.

15. The Court *en banc* agrees with the Civil Chamber in that, following the first sentence of subsection 4 of

§ 150 of the CCP, the claimant can address the Supreme Court with a request for the refund of the fee paid in the appeal proceedings and the Court *en banc* is competent to adjudicate the request, because the Supreme Court was the last instance to discuss the case. The Supreme Court made a judgment in the case on 1 December 2010 (civil case no. 3-2-1-109-10).

16. For the purposes of subsection 6 of § 150 of the CCP (and the second sentence of subsection 1 of § 12 of the SFA), the request for the refund of the state fee was submitted within the prescribed time limit. The state fee was paid for the claimant in the appeal proceedings on 26 and 28 January 2010 and the claimant submitted the request for the refund of the state fee to the Supreme Court on 12 July 2012.

17. The state fee of 115 000 Estonian kroons as prescribed by law was paid on the claimant's appeal. In total, the claimant paid the state fee in the amount of 145 000 Estonian kroons, of which 30 000 Estonian kroons will be refunded, as decided.

In the claim lodged with the court of first instance on 8 April 2009, the claimant requested that the court order the defendant to pay the principal amounting to 2 500 000 Estonian kroons and interest amounting to 557 491 Estonian kroons and 90 cents. Under subsection 1 of § 124 and subsections 1 and 2 of § 133 of the CCP (in the wording in force before 1 July 2012), the value of such a claim was 2 500 000 Estonian kroons. Under subsection 1 of § 56 of and Annex 1 of the SFA in force before 1 January 2011, a state fee of 115 000 Estonian kroons had to be paid on such a claim. Under subsection 19 of § 56 of the SFA in force before 1 January 2011, the state fee payable on the appeal lodged on 21 January 2010, considering the scope of the appeal, was equal to the state fee payable to lodge a claim with the court of first instance, also amounting to 115 000 Estonian kroons.

II

18. The claimant will have the right to a refund of a portion of the fee paid on the appeal only if the rate of the fee is declared unconstitutional. The Court *en banc* can assess the constitutionality of the contested State Fees Act only if this can be considered relevant (the first sentence of subsection 2 of § 14 of the JCRPA). The provision is relevant if the Court, in applying it upon adjudication of the case, would, in the event of its unconstitutionality, have to decide otherwise than in the event of constitutionality (see, for instance, the Supreme Court *en banc* judgment of 22 December 2000 in case no. 3-4-1-10-00, point 10; judgment of 28 October 2002 in case no. 3-4-1-5-02, point 15).

19. As is the case with the adjudication of any other statement, petition, application, appeal or request, the resolution of a request for a refund of a state fee calls for assessment of the constitutionality of provisions precluding the granting of the request. The court itself also has the duty to assess the constitutionality of provisions. If a party to proceedings from whom the payment of a state fee is demanded does not agree with the amount of the fee, but pays the fee in the interests of continuing the proceedings, the party will be able, under clause 1 of subsection 1 and subsection 4 of § 150 of the CCP, to demand a refund of the overpaid state fee and thereby rely on the unconstitutionality of the paid fee at least until the respective judicial decision has entered into force (see the Supreme Court *en banc* judgment of 28 February 2013 regarding similar provisions of the Code of Administrative Court Procedure in case no. 3-4-1-13-12, p. 36).

20. The Supreme Court *en banc* finds that clause 1 of subsection 1 and subsection 6 of § 150 of the CCP must be interpreted in conjunction in such a manner that, upon requesting a refund of the overpaid state fee, the person can rely on the unconstitutionality of the fee until the proceedings have been terminated by a final judicial decision, provided that the person had the chance to submit such a request during the proceedings. Thus, a refund of a fee based on the unconstitutionality of the provisions serving as the basis for payment of the fee can be requested upon adjudication of the request submitted before the termination of the proceedings by a final judicial decision. Upon adjudicating a request submitted later, provided that the person had the chance to submit such a request before the termination of the proceedings by a final judicial decision, the court cannot assess the unconstitutionality of the provisions serving as the basis for payment of the fee.

The Court *en banc* believes that, upon enabling a refund of overpaid state fees, the Legislature had in mind the refunding of erroneously overpaid fees. The refunding of the state fee following the termination of the proceedings of a court case by a final decision under clause 1 of subsection 1 of § 150 of the CCP is a formal procedure where it is verified whether the amount of the fee that the person paid was in compliance with the Act in force at the time of charging the fee.

21. The affecting of § 15, subsection 5 of § 24 and § 152 of the Constitution by such an interpretation of clause 1 of subsection 1 and subsection 6 of § 150 of the CCP is acceptable. The provision is in the interests of the legitimate purposes of the principles of legal certainty and procedural economy (see also, for instance, the Supreme Court *en banc* judgment of 12 April 2011 in case no. 3-2-1-62-10, point 45) which justify the affecting of a person's rights. Among other things, such a system enables the prevention of judicial proceedings of numerous requests for a refund of state fees and, thus, ensures the ability of the court system to provide persons with effective legal protection within a reasonable amount of time.

22. In the course of the proceedings, the claimant did not apply to declare the rate of the state fee unconstitutional or refuse to pay the fee for this reason. The claimant has not requested a refund of the fee on the same grounds as earlier either. Upon adjudicating the claimant's appeal, the court of appeal did not initiate constitutional review proceedings for the purpose of verifying the constitutionality of the fee payable, even though the court could have done so on its own motion.

However, after paying the fee on the appeal, the claimant had multiple opportunities in the course of the proceedings in the court of appeal, as well as upon submission of the request for a refund of the state fee overpaid in the appeal proceedings or upon submission of an appeal against the order refusing a refund of the fee, to submit that the state fee was unconstitutional. Thus, in the course of the proceedings the claimant had effective opportunities to challenge the constitutionality of the provisions of the SFA. By failing to seize these opportunities, the claimant has lost the opportunity to rely on the unconstitutionality of the state fee after the termination of the proceedings by a final judgment. Therefore, there are no grounds for examining the constitutionality of the provisions contested by the claimant.

23. For the above reason the Court *en banc* decides not to accede to the claimant's request.

Märt Rask, 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, Priit Pikamäe, Ivo Pilving, Jüri Põld, Harri Salmann, Tambet Tampuu

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Dissenting opinion of justices Tõnu Anton, Peeter Jerofejev, Hannes Kiris and Villu Kõve on the Supreme Court *en banc* order of 2 April 2013 in case no. 3-2-1-140-12; justice Ivo Pilving supports points 1-4 of the opinion

1. We disagree with the majority of the Court *en banc* in that it was not possible to analyse the constitutionality of the provisions serving as the basis for paying the state fee.

2. This case is substantively very similar to case no. 3-4-1-13-12 adjudicated by the Court *en banc* judgment of 28 February 2013, where a request for a refund of a state fee overpaid in court of appeal and court of first instance proceedings which was submitted to the court of appeal in administrative court proceedings due to the unconstitutionality of the fee was decided. The Court *en banc* granted this request. The only difference in this case compared to the other case is that the judgment in this case has entered into force.

3. The Court *en banc*'s interpretation, according to which from the entry into force of a judicial decision to the passing of a period of two years from the end of the year of payment one cannot rely on the unconstitutionality of the fee, is not based on law. Subsection 6 of § 150 of the CCP (or subsection 1 of § 12 of the SFA) enables the requesting of a refund of an overpaid state fee within two years of the end of the year of payment of the fee and has not limited this right by the time of termination of proceedings.

It is illogical that, upon resolving the same request, one can rely on the unconstitutionality of the fee until a decision has entered into force in the same case (this arising from the judgment in case no. 3 4-1-13-12), but not thereafter. In the context of adjudication of a request for a refund of a fee, the termination of proceedings in the case is an accidental kind of moment that does not affect the request for the refunding of the fee or the adjudication of the request. Moreover, the hearing of the substance of the case is in no way related to the proceedings of refunding the fee, because, for instance, if the party to the proceedings pays the state fee at the rate prescribed by law for the purpose of preventing the case from being dismissed, the party can still, in appeal proceedings, request a refund of the fee under § 150 of the CCP after the termination of the proceedings in the court of first instance by arguing that the state fee rate charged and paid in the first instance is unconstitutional. Besides, it is possible that the proceedings will be restored for some reason, e.g. in the event of restoration of the time limit of appeal or judicial review. In such an event, the interpretation of the majority of the Court *en banc* will probably make it possible to rely on the unconstitutionality of the paid fee again.

4. In principle, the Court *en banc* has interpreted the provision in a way that narrows the fundamental rights of persons. This is a dangerous precedent whereby the Legislature can specify a person's statements or request upon adjudication of which the constitutional review can be precluded.

5. The Court *en banc* has justified affecting the person's fundamental rights by referring to the principles of legal certainty and procedural economy. Thereby the aspect of legal certainty is highly questionable, because only holders of fundamental rights should be able to rely on it, not the state. The procedural economy argument is also questionable, because constitutional review cannot be eliminated by this argument in refund proceedings permitted by law. In essence, the Court *en banc* has rejected the request by stating that it is too burdensome for the state to resolve.

Dissenting opinion of justice Jüri Põld on the Supreme Court *en banc* order of 2 April 2013 in case no. 3-2-1-140-12

1. I agree with the operative part of the Court *en banc* order, but not with the reasons therefor.

2. The case at hand is, in my opinion, largely analogous to constitutional review case no. 3 4-1-13-12 adjudicated by the Court *en banc*judgment of 28 February 2013 (hereinafter the earlier case or previously adjudicated case) to which I added my dissenting opinion, because I disagreed with the operative part of the judgment.

Both the present case and the earlier case involve a request for a refund of a paid state fee, raising the issue of the constitutionality of the state fee paid.

The earlier case was a constitutional review case that arose from an administrative case. The current one is a civil case where the Court *en banc* carried out a judicial constitutional review. The majority of the Court *en banc* sees the difference between the earlier case and the present case as follows. In the earlier case, the request for a refund of the excessive state fee paid on the claim and appeal was submitted in the course of the proceedings after the administrative court (court of first instance) had adjudicated the substance of the case by a judgment, an appeal had been lodged against the judgment of the administrative court and a judicial decision in the case had not yet entered into force. In the current case, the request for a refund of the state fee paid on the appeal was submitted after the termination of the proceedings (following the entry into force of the judgment).

3. In both the earlier case and the present case, the Court *en banc* decided whether the issue of the unconstitutionality of the paid state fee due to the size of the fee could be raised in a request for a refund of an overpaid state fee. In the earlier case, the Court *en banc* declared the relevant provision of the State Fees Act unconstitutional, because the right of recourse to a court granted in subsection 1 of § 15 of the

Constitution and the right of appeal granted in subsection 5 of § 24 of the Constitution had been infringed by too high a state fee. I disagreed with such an approach, because I found that the claimant's fundamental rights were not infringed, as the substance of the case was heard in court and a judgment was passed. In this case, the Court *en banc* held that, upon hearing a request for a refund of an overpaid state fee submitted after the termination of judicial proceedings, it is not possible to adjudicate the issue of the constitutionality of the state fee.

4. I find that the claimant's fundamental rights have not been infringed in the present case either. The claimant paid the state fee on the appeal and the substance of his appeal was heard by the court of appeal. Therefore, I would have stated in the present order of the Court *en banc*, by which the claimant's request for a refund of the state fee was rejected, that the amount of the state fee did not violate the right of appeal granted by subsection 5 of § 24 of the Constitution. The amount of the state fee did not impede the lodging of an appeal.

5. I also note a contradiction between the earlier and present decisions. Where the Court *en banc* identified an infringement of § 15 and subsection 5 of § 24 of the Constitution in its earlier decision, the Court should also have noted an infringement of subsection 5 of § 24 of the Constitution in the present case where it was argued that the fee for lodging an appeal is unconstitutional.

I am not convinced by the reasons stated in points 20-21 of the order of the Court *en banc* regarding why a person, in a request for a refund of an overpaid state fee, can rely on the unconstitutionality of the fee only until the termination of the proceedings by a final judicial decision. In other words, the reasons stated by the Court *en banc* are insufficient to adjudicate the present case differently to the earlier one.

6. The Supreme Court *en banc* held in point 20 that clause 1 of subsection 1 and subsection 6 of § 150 of the CCP must be interpreted in conjunction in such a manner that, upon requesting a refund of the overpaid state fee, the person can rely on the unconstitutionality of the fee until the proceedings have been terminated by a judicial decision that has entered into force, provided that the person had the chance to submit such a request during the proceedings.

Clause 1 of subsection 1 of § 150 of the CCP states that a state fee that has been paid will be refunded "to the overpaid extent, provided that the state fee paid exceeds the prescribed amount of the state fee."

Subsection 6 of § 150 of the CCP: "A state fee claim will expire after two years has passed since the end of the year of payment of the state fee, but not before the termination of the proceedings by a final judgment or order."

Clause 1 of subsection 1 of § 150 of the CCP provides for the right of claim. Subsection 6 of § 150 of the CCP is a provision that regulates only the expiry of a claim. In my opinion these provisions do not, jointly or separately, enable the conclusion to be drawn that a person can raise the issue of the unconstitutionality of an overpaid state fee until termination of proceedings, but cannot raise the issue after the termination of the proceedings. I do not think that the wording of these provisions in any way allows for the conclusion that the Legislature sought to regulate the commencement of judicial constitutional review proceedings in a different manner in the event of a request for a refund of an overpaid state fee depending whether the request was submitted before or after the entry into force of a judgment or order.

7. Firstly, in point 21 of the order the Court *en banc* takes the view that the interpretation chosen by it serves the purpose of legal certainty in an event where the rights granted by § 15, subsection 5 of § 24 and § 252 of the Constitution are affected.

However, the order does not indicate the manner in which such interpretation serves the purpose of legal certainty. Nor does it indicate which aspect or sub-principle of the principle of legal certainty the Court *en banc* has in mind.

8. Secondly, in point 21 of the order the Court *en banc* takes the view that the interpretation chosen by it

serves the purpose of procedural economy in an event where the rights granted by § 15, subsection 5 of § 24 and § 152 of the Constitution are affected. Here, the Court holds: “Among other things, such a system allows for the prevention of the judicial proceedings of numerous requests for a refund of state fees and, thus, ensures the ability of the court system to provide persons with effective legal protection within a reasonable amount of time.”

I find that, upon presenting such a position, the Court has disregarded the fact that the law in force already contains provisions serving the interests of procedural economy, which enable the hearing of the substance of such numerous requests for a refund of state fees to be avoided, whereby, following the entry into force of a judgment or order, the issue of the unconstitutionality of the state fee subject to refund is raised.

Subsection 2 of § 356 of the CCP reads: “The court may suspend the proceedings until a judgment of the Supreme Court in a constitutional review case that is being heard by the Supreme Court and may affect the validity of a legal instrument of general application applicable in the civil case has entered into force.”

Thus, the law in force does not force lower instance courts to hear the substance of all requests for a refund of overpaid state fees where it is argued, following the entry into force of a judicial decision, that the state fee paid is unconstitutional. On the basis of subsection 2 of § 356 of the CCP, the court can suspend such fee refund proceedings if the constitutional review of a similar state fee rate is being carried out by the Supreme Court. After the retroactive repealing of a similar fee rate by a judgment of the Supreme Court, the lower instance court will merely hold a formal hearing of requests for the refunding of overpaid state fees. If the Supreme Court sets a state fee rate on its own upon adjudicating a civil case, whether the amount of the fee paid by a person corresponds to the state fee rate set by the Supreme Court is verified by way of a formal hearing. If, upon retroactively repealing a state fee rate when adjudicating a constitutional review case, the Supreme Court does not on its own set the state fee rate payable, the lower instance court is able to follow the case law of the Supreme Court upon determining the state fee rate payable by way of a formal hearing (paragraph 2 of point 51 of the judgment in civil case no. 3 2 1 62 10, paragraph 1 of point 34 of a judgment in administrative case no. 3 3 1 22 11 and paragraph 2 of point 29 of a judgment made in civil case no. 3-2-1-67-11). Therefore, upon the application of subsection 2 of § 356 of the CCP, the courts of lower instances would, by way of a formal hearing, adjudicate most requests for a refund of state fees whereby the unconstitutionality of the fee is argued following the entry into force of a judicial decision. In point 20 of the order, the majority of the Court *en banc* does not find that the formal hearing of state fee refund requests submitted after the entry into force of a judicial decision in a civil case harms procedural economy. Likewise, the formal hearing of requests submitted in civil cases after the entry into force of a judgment or order in constitutional review proceedings whereby it is requested that the overpaid state fee be declared unconstitutional cannot harm procedural economy either.

I would like to note that requests to refund an overpaid state fee following the entry into force of a judicial decision, whereby the unconstitutionality of the paid state fee is argued, is not the only factor that affects the number of cases where the substance of the issue of the constitutionality of the state fee needs to be heard. It follows from the earlier judgment that the constitutionality of a state fee can be challenged in a request for a refund of the state fee submitted in the course of the judicial proceedings. The unconstitutionality of the state fee demanded by the court can be argued in an appeal lodged in accordance with the procedure provided by law. Presumably, the two latter procedural law tools allow for the contesting of the constitutionality of many court fees and for the attaining of the judicial constitutional review of many court fees. I would like to repeat that, after a state fee rate has been retroactively repealed due to unconstitutionality in one case, a formal hearing is merely held in courts regarding remaining requests for state fees paid at a similar rate. For these reasons I doubt whether the hearing of requests for a refund of state fees submitted after the termination of proceedings where the unconstitutionality of the fee is argued can seriously affect the number of such judicial proceedings where the constitutionality of the state fee rate is reviewed.
