Constitutional judgment 3-4-1-25-09

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT**

No. of the case	3-4-1-25-09
Date of ruling	15 December 2009
Composition of court	Chairman Märt Rask, members Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Harri Salmann
Court Case	Request of the Tallinn Circuit Court to declare unconstitutional § 131(2) and (3) of the Code of Civil Procedure in conjunction with the provision of Annex 1 to the State Fees Act, which prescribes the obligation to pay the state fee of 75 000 kroons on a civil matter with a value of up to 1 000 000 kroons.
Basis of proceedings	Ruling of the Tallinn Circuit Court in civil matter no. 2-09-947 of 5 October 2009
Hearing	Written proceedings.
DECISION	**To declare § 131(2) and (3) of the Code of Civil Procedure (to the extent that § 131(3) refers to § 131(2)) and Annex 1 to the State Fees Act unconstitutional and invalid in the part which prescribes the obligation to pay the state fee of 75 000 kroons on an action for establishment of the nullity of a resolution of the general meeting of a building association.**

FACTS AND COURSE OF PROCEEDINGS

1. According to the ruling of the Tallinn Circuit Court of 5 October 2009, on 9 January 2009 Vladimir Gavrilov and Leonid Bolmat (hereinafter plaintiffs) filed an action with the Harju County Court against the building association Sadam (hereinafter defendant) in declaration of the nullity of a resolution of the general meeting of the defendant.

2. On 20 February 2009, the Harju County Court made a ruling in which it noted that as the amount of net assets of the defendant exceeds 22 308 000 kroons, then the value of the action in accordance with § 131(2) of the Code of Civil Procedure (CCP) is 2 230 800 kroons. Thus, according to subsection (3) of the same section, the determined value of the action is 1 000 000 kroons which corresponds to the state fee of 75 000 kroons. By the same ruling, the county court dismissed the request of the plaintiffs to exempt them from payment of the state fee by way of procedural aid.

3. By a ruling of 30 March 2009, the Harju County Court refused to accept the action. According to the ruling, the term for the elimination of deficiencies has expired, but the deficiencies have not been eliminated. The state fee prescribed by law has not been paid.

4. The plaintiffs filed to the Tallinn Circuit Court an appeal against the ruling of the Harju County Court of 30 March 2009, in which they asked to annul the ruling of the county court.

5. By a ruling of 5 October 2009, the Tallinn Circuit Court partially satisfied the appeal against the ruling and sent the statement of claim to the county court for proceeding for a new resolution of the matter. The circuit court found that § 131(2) and (3) of the Code of Civil Procedure in conjunction with the provision of Annex 1 to the State Fees Act (SFA), which prescribes the obligation to pay the state fee of 75 000 kroons on a civil matter with a value of up to 1 000 000 kroons must be declared to be in conflict with the Constitution and must not be applied, and thereby the circuit court initiated constitutional review proceedings.

JUSTIFICATIONS OF PARTICIPANTS IN PROCEEDINGS

6. The Tallinn Circuit Court found that the county court has interpreted the action correctly as an action for establishment of the nullity of a resolution of a legal person in the case of which the value of a civil matter is determined according to § 131(2) and (3) of the CCP. The county court also correctly found that in the disputed matter, the value of the civil matter, in accordance with § 131(3) of the CCP, is 1 000 000 kroons and that in accordance with Annex 1 to the SFA which is in force, the fee of 75 000 kroons must be paid on such claim. The dispute also does not concern the fact that the state fee has not been paid in the amount provided by law. In such case, § 340^1(2) of the CCP grants the court the right to refuse acceptance of the statement of claim. Thus, the county court acted in accordance with the Acts in force when it refused to accept the statement of claim filed by the plaintiffs.

7. But the circuit court decided that § 131 (2) and (3) of the CCP in conjunction with the provision of Annex 1 to SFA, which prescribes payment of the state fee of 75 000 kroons on a civil matter with a value of up to 1 000 000 kroons, is in conflict with the Constitution and must not be applied.

The circuit court found that the state fee which the plaintiffs must pay in the dispute on the validity of the resolutions of the building association according to § 131 (2) and (3) of the CCP and according to the rate provided for in Annex 1 to the SFA to be paid on a claim in the amount of 1 000 000 kroons, is not in proportion to the objective of economy of proceedings for the achievement of which the state fee rates have been established. Complete preclusion of court actions of a certain kind cannot be the objective of the economy of proceedings, but in the case of unreasonably high state fees, exactly this unjustified purpose is achieved. If a member of a building association must pay the state fee of 75 000 kroons in order to contest a resolution of the general meeting of the same building association, then his or her possibility to contest these resolutions in court is disproportionately restricted regardless of whether the specific person has the right to receive procedural aid upon payment of the state fee, as demanding payment of the fee which is so high – exceeds the state's average wages many times – is already in itself not purposeful and reasonable, especially taking account of the content of the dispute. So, the purpose of the action is primarily to ensure the lawfulness of the resolutions of the association and, thus, protect the interests of all members of the association; upon contesting a resolution of the general meeting of the building association, the members of the association do not necessarily pursue a direct personal interest. When assessing the proportionality of the state fee established regarding the contested claim, it is not justified to take into account the right of a specific person to receive procedural aid also due to the fact that if the person received procedural aid in the

dispute, he or she would, if he or she lost the dispute, still have to compensate the state for the state fee from which the person was exempted upon filing the action (§ 190(4) and (5) of the CCP). Therefore, upon filing an action, or filing an appeal in further proceedings, the plaintiff will have to take a risk that, regardless of whether he or she receives procedural aid, he or she will eventually have to pay the fee. The same applies to the counterparty to the dispute, so that one of the parties to the dispute is in any case required to pay the state fee to the state. In the case of the plaintiffs in dispute, the county court has found that there are no circumstances which would allow to provide state procedural aid to them.

As the aforementioned provisions are in conflict with the Constitution and must not be applied, then the county court did not have the bases to refuse to accept the action for proceeding on the grounds that the state fee has not been paid on the statement of claim in the amount provided by law. The county court had to make a new judgment on acceptance of the statement of claim for proceeding.

8. The plaintiffs find that a ruling of the Tallinn Circuit Court is lawful and justified. The restriction arising from the relevant provisions is unreasonable and disproportionate and therefore in conflict with the Constitution.

9. The defendant supports the positions presented in the ruling of the Tallinn Circuit Court.

10. The Constitutional Committee and the Legal Affairs Committee presented opinions on behalf of the Riigikogu. The Constitutional Committee agreed with the opinion of the circuit court that the state fee in the amount of 75 000 kroons is a disproportionate measure to achieve the principle of economy of proceedings, and could make judicial proceedings relating to the contestation of resolutions of a body of a legal person specified in § 131(2) of the CCP unavailable to interested persons. Therefore, the Constitutional Committee found that § 131(2) and (3) of the CCP in conjunction with the provision of Annex 1 to the SFA, which prescribes payment of the state fee of 75 000 kroons on a civil matter with a value of up to 1 000 000 kroons, may be in conflict with §§ 15 and 11 the Constitution in their conjunction.

The Legal Affairs Committee finds that § 131(2) and (3) of the CCP in conjunction with the provision of Annex 1 to the SFA may, due to the amount of the state fee subject to payment, in practice prove to be in conflict with the right of everyone to have the right of recourse to courts in order to have their rights and freedoms protected, which is provided for in § 15(1) of the Constitution, and in conjunction they may give rise to a disproportionate restriction, which is, however, not absolute, but depends on the subjects and content of the specific dispute.

11. The Minister of Finance finds that in cases where the fee rate arises from the value of an action, the Ministry of Finance has not had the possibility to assess the conformity of the fee rate developed on the basis of the value of the action with § 4 of the SFA, as the value of actions is not provided for in the State Fees Act but in the Code of Civil Procedure. These provisions of the Code of Civil Procedure have been developed by the Ministry of Justice, thus the executive authority which prepared the wordings of the regulations and whose competence includes provision of legal explanations in these matters is the most competent to legally analyse the contested regulations.

12. The Minister of Justice finds that § 131(2) and (3) of the CCP and Annex 1 to the SFA are not appropriate regulations. The Supreme Court has repeatedly noted that deciding on the relevance of a provision sometimes also includes assessment of whether a court which initiated the review of regulations has correctly interpreted the regulation which has been declared to be unconstitutional, and regulations which determine the conditions and extent of application of the provision which has been declared unconstitutional. The plaintiffs have not contested the ruling of the Harju County Court of 20 February 2009 by which the plaintiffs were refused procedural aid. This ruling has entered into force. If the Supreme Court declares a provision which was the basis therefor invalid, the ruling will still remain in force. Therefore the contested provisions are irrelevant and the request of the Tallinn Circuit Court is not admissible.

Even if change of the validity of the ruling of the Harju County Court of 20 February 2009 were possible,

first of all it would be assessed whether the court has applied law correctly in the specified ruling. In the opinion of the Minister of Justice, the court has not resolved the request of plaintiffs for procedural aid correctly.

The Tallinn Circuit Court has noted that the possibility to receive procedural aid need not be taken into account because eventually one of the participants in proceedings is going to pay the state fee anyway and if the action is dismissed, the state fee has to be paid by the plaintiff. The court reached the conclusion by interpretation of § 190(4) and (5) of the CCP. In this way, the court has not applied law correctly. Indeed, it is correct that exemption from payment of the state fee upon provision of procedural aid is only an initial decision which does not preclude that the person may be obliged to pay the fee later. The position that the court later has no room for decision-making on this matter is incorrect. According to § 190(7) of the CCP, a court may, with good reason, inter alia in the case of a compromise, prescribe a later date for the payment of costs into the public revenues or payment of the costs in instalments within a term prescribed by the court, or release the person from the obligation to pay procedural costs in the public revenues. Thus, law prescribes a possibility that a court, also upon dismissal of an action, does not demand that a plaintiff pay the state fee from which the court exempted the person in the first place.

13. The Chancellor of Justice finds that § 131(2) and (3) of the CCP in conjunction with the provision of Annex 1 to the SFA, which prescribes the payment of the state fee of 75 000 kroons on a civil matter with a value of up to 1 000 000 kroons is in conflict with the Constitution.

§ 131(2) and (3) of the CCP in conjunction with the provision of Annex 1 to the SFA, which prescribes the payment of the state fee of 75 000 kroons on a civil matter with a value of up to 1 000 000 kroons are relevant.

As regards the infringement of fundamental rights, the Chancellor of Justice found that, in this case, the general fundamental right to effective legal protection and fair trial arising from § 15(1) of the Constitution in conjunction with § 14 of the Constitution, which must ensure the judicial protection of rights without gaps, are affected. The Acts which are the bases for the claim of the state fee are formally in conformity with the Constitution.

The Chancellor of Justice sees the economy of proceedings as the legitimate objective of the infringement. Arising from Chapter XIII of the Constitution, the economy of proceedings is a legal value of constitutional ranking.

According to the opinion of the Chancellor of Justice, it must be ascertained whether establishment of the state fee of 75 000 kroons is, in this case, proportionate to the objective of the economy of proceedings, more precisely to the objective to prevent excessive and vexatious or evidently unjustified appeals and actions. Establishment of the state fee of 75 000 kroons in order to establish the nullity of a resolution of a body of any other legal person than a private limited company or public limited company is an appropriate and necessary measure in order to ensure the economy of proceedings. It is questionable whether it is moderate.

Taking account of the fact that each court fee restricts the general fundamental right to effective legal protection and fair trial, which is of high value, each fee requires a rational and overwhelming justification. If the objective is to prevent excessive and vexatious or evidently unjustified appeals and actions, then the legislator should not create a situation by the establishment of fees where the filing of doubtful or disputable appeals and actions is also precluded. Having recourse to a court should not be ensured only in cases with a certain prospect of success. In sum, the function of judicial authorities is to ensure legal peace which is at the same time one of the core functions of the state. In a state based on the rule of law, legal peace is one of the benefits primarily and principally guaranteed to every person by the state. The legitimate purpose of a court fee must cover the amount of the court fee and the cases of application applied for.

In the course of a specific review of regulations, the conformity of a regulation with the Constitution can be

assessed on the basis of the circumstances of a specific court case. This case concerns contestation of a resolution of the general meeting of a building association. Formally, a building association is a commercial association, but in substance, it is a non-profit association. In substance, the dispute between members of a building association resembles a dispute between co-owners on administration of an object of common ownership. The legislator has regulated the latter situation in § 613(2) of the CCP in conjunction with § 613(1) of the CCP. Most of the disputes between co-owners can be adjudicated on the basis of these provisions in proceedings on petition, and the value of the thing depends of the usual value of that applied for on petition (§ 122(3) of the CCP). A building association differs from common ownership because a building association itself is the owner and a member of the building association is formally a partner in a commercial association, at the same time when in the case of co-ownership, it means simply co-owners within the meaning of §§ 70 et seq. of the Law of Property Act (LPA). At the same time, the objective of a building association is to only administer the ownership, i.e. to preserve and improve the ownership. This means no direct earning of income, but each owner's natural maintenance activities. In the case of a dispute between members of a building association, a possibility to have recourse to a court must be available. This right must not be only theoretical and illusory, but must be effectively guaranteed. The European Court of Human Rights has repeatedly declared that a court fee which is too high constitutes a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

RELEVANT PROVISIONS

14. § 131(2) and (3) of the CCP provide for the following:

"§ 131. Value of action upon repeal or establishment of nullity of resolution of legal person [---]
(2) The value of an action for repeal or establishment of the nullity of a resolution a body of other legal persons shall be one tenth of the net assets of the legal person according to the annual report of the past financial year, but not less than 25 000 kroons.
(3) In the cases specified in subsections (1) and (2) of this section, the value of the action shall not be deemed to be higher than 1 000 000 kroons."

15. Annex 1 to the State Fees Act "Full state fee rates for filing of petition in civil proceedings (in kroons)":

Value of civil matter up to, including Full state fee rate
1 000 000 75 000

OPINION OF CHAMBER
16. The Chamber first assesses the relevance of the provisions which were not applied by the Tallinn Circuit Court, ascertains the relevant fundamental right (I) and thereafter analyses the formal (II) and substantive constitutionality of the provisions (III).

I

17. Pursuant to § 14(2) of the Constitutional Review Court Procedure Act, a provision the constitutionality of which is assessed by the Supreme Court must be relevant to the adjudication of the main dispute. In this case, the dispute concerns the question whether plaintiffs have the obligation to pay the state fee of 75 000 kroons for the filing of an action for establishment of the nullity of a resolution of the general meeting of a building association. According to the practice of the Supreme Court, a provision is relevant when it is of decisive importance upon adjudicating the court case (see e.g. judgment of the Supreme Court *en banc* of 22 December 2000 in case no. 3-4-1-10-00, paragraph 10). A provision is of decisive importance when in the case of unconstitutionality of the provision a court, upon adjudicating the matter, should render a judgment different from that in the case of constitutionality of the provision (see e.g. judgment of the Supreme Court *en banc*of 28 October 2002 in case no. 3-4-1-5-02, paragraph 15).

18. In this case, the obligation to pay the state fee of 75 000 kroons arises firstly from the fact that it concerns an action for establishment of the nullity of a resolution of the general meeting of another legal person specified in § 131(2) of the CCP (in this case a building association). In such case, § 131(2) of the CCP provides that the value of the action is one tenth of the net assets of the legal person according to the annual report of the past financial year. In this case, it has been ascertained in the matter that the amount of the net assets of the defendant is 22 308 000 kroons and, according to § 131(2) of the CCP, the value of the action would then be 2 230 800 kroons. In such case, § 131(3) of the CCP should be additionally applied, according to which the value of the action is not deemed to be higher than 1 000 000 kroons in the case of § 131(1) and (2) of the CCP. Thereafter, the amount of the state fee in the case of the value of an action of 1 000 000 kroons should be verified on the basis of Annex 1 to the SFA. The state fee in the case of the specified value of an action is 75 000 kroons according to Annex 1 of the SFA. If the aforementioned regulations were unconstitutional, the state fee of 75 000 kroons should not be paid on an action for establishment of the nullity of a resolution of the general meeting of a building association.

The Chamber finds that § 131(3) of the CCP is, in this case, not relevant as a whole, but only in the part which refers to § 131(2) of the CCP. This dispute does not concern § 131(1) of the CCP which determines the value of an action for repeal or establishment of the nullity of a resolution of a body of a private limited company or public limited company and in the case of which subsection (3) also establishes the highest value of the action in the amount of 1 000 000 kroons.

Thus, in this case, the relevant provisions are § 131(2) of the CCP and § 131(3) of the CCP (to the extent where it refers to subsection (2)) and Annex 1 to the SFA in the part which prescribes the obligation to pay the state fee of 75 000 kroons on an action for establishment of the nullity of a resolution of the general meeting of a building association.

19. The Chamber does not agree with the position of the Minister of Justice that § 131(2) and (3) of the CCP and Annex 1 to the SFA are not relevant regulations. The Minister of Justice has reasoned the irrelevance of the specified provisions primarily with the fact that the judgment to be made in this matter cannot influence the ruling of the Harju County Court of 20 February 2009 which has entered into force and that the specified ruling is also incorrect in its contents. The Chamber finds that the ruling of the Harju County Court of 20 February 2009 is not relevant any more in this stage of proceedings. The question of the value of the action was resolved by the specified ruling and it was decided that the plaintiffs are not to be exempted from payment of the state fee. By the ruling which has entered into force, the Harju County Court did not initiate constitutional review proceedings. Thus, the contents of the ruling cannot be assessed either. The Chamber also notes that as the issue of provision of procedural aid is resolved in this matter by a court decision which has entered into force, § 190(7) of the CCP cannot be analysed in the course of the specific review of regulations.

20. The provisions under dispute invade the fundamental right to effective legal protection arising from § 15(1) of the Constitution, which must ensure the judicial protection of rights without gaps. The Supreme Court has pointed out the following: “The right to judicial protection established in §§ 13, 14 and 15 of the Constitution includes both the right of a person whose rights and freedoms are violated to file an action with a court as well as the duty of the state to provide for an appropriate judicial procedure for the protection of fundamental rights that is fair and ensures effective protection of the rights of the person.” (judgment of the Supreme Court *en banc* of 16 May 2008 in case no 3-1-1-88-07, paragraph 41).

Infringement of the protection area means the unfavourable influencing thereof. In this case, the fact that relevant provisions establish the obligation to pay the state fee in the amount of 75 000 kroons on an action for establishment of the nullity of a resolution of the general meeting of a building association constitutes an unfavourable influencing. This obligation unfavourably influences the general fundamental right to effective legal protection and, hence, infringes the protection area of the right.

The obligation to pay the state fee upon filing an action in a civil matter, which infringes fundamental rights must be both formally and substantively in conformity with the Constitution.

II

21. Formal constitutionality means that legislation of general application, restricting fundamental rights, must be in conformity with the requirements of competence, procedure and form, as well as with the principles of determinateness and ‘subject to reservation by law' prescribed by the Constitution (judgment of the Constitutional Review Chamber of the Supreme Court of 13 June 2005 in case no 3-4-1-5-05, paragraph 8).

22. The Constitutional Review Chamber of the Supreme Court has analysed amendment of the SFA by the Act to Amend the Code of Civil Procedure and Related Acts passed by the Riigikogu on 10 December 2008 in paragraphs 17 and 18 of the judgment made on 17 July 2009 in case no 3-4-1-6-09. Annex 1 to the SFA was also amended by the specified Act. In the referred case, the Supreme Court finds the following: “Procedural laws are constitutional laws referred to in § 104(2)14) of the Constitution, which may be passed and amended only by a majority of the membership of the Riigikogu. Nevertheless, when an issue concerning judicial procedure is regulated by an ordinary Act and at the final vote of the draft a majority of the membership of the Riigikogu voted in favour thereof, the procedural requirement arising from § 104(2)14) of the Constitution is fulfilled.”

In § 38(24) of the Act to Amend the Code of Civil Procedure and Related Acts adopted by the Riigikogu on 10 December 2008, the SFA, regarding Annex 1, was amended by adding higher state fee rates. This Act was passed by 59 votes in favour, i.e. by the majority of the membership of the Riigikogu.

The Code of Civil Procedure which entered into force on 1 January 2006 was adopted by the Riigikogu on 20 April 2005. This Act was passed by 71 votes in favour, i.e. by the majority of the membership of the Riigikogu.

III

23. As the fundamental right to effective legal protection arising from the first sentence of § 15(1) of the Constitution is a fundamental right not subject to reservation by law, only other fundamental rights or constitutional values can justify the restriction of the right. Nevertheless, the right to file appeals prescribed in § 15 of the Constitution is not absolute. The legislator has the right, within the constitutional frames, to establish the limits of this right, taking into account other constitutional values (ruling of the Constitutional Review Chamber of the Supreme Court of 9 May 2006 in case no 3-4-1-4-06, paragraph 12; judgment of 3 April 2008 in case no 3-4-1-3-08, paragraph 5).

The substantive constitutionality of the infringement of the general fundamental right to effective legal protection depends, first of all, on whether the objective of the infringement is legitimate and, thereafter, whether the infringement committed in order to achieve a legitimate objective is proportionate. As § 15(1) of the Constitution is a fundamental right not subject to reservation by law, it is legitimate to restrict the right only in order to ensure some other fundamental right or legal value of constitutional ranking.

At the second reading of the draft Act passed on 10 December 2008, the presenter on behalf of the Legal Affairs Committee justified the general increase of fees, inter alia, by the need to prevent excessive and vexatious appeals. The prevention of excessive and vexatious appeals refers to the economy of proceedings, which is the general objective of establishing state fees on actions and appeals. The economy of proceedings is, arising from Chapter XIII of the Constitution, a legal value of constitutional ranking (judgment of Supreme Court *en banc* of 17 March 2003 in case 3-1-3-10-02, paragraph 9). The Constitutional Review Chamber of the Supreme Court reached the same conclusion regarding the legitimacy of the objective of the infringement also in paragraph 20 of the judgment made on 17 July 2009 in case no. 3-4-1-6-09.

24. Next, it must be ascertained whether charging of the state fee of 75 000 kroons on the filing of an action is proportionate to the objective of the economy of proceedings. The principle of proportionality arises from the second sentence of § 11 of the Constitution pursuant to which restrictions on rights and freedoms need to be justified in a democratic society. The compliance with the principle of proportionality is verified by a court at three levels consecutively – first, the appropriateness of the measure, then the necessity of the measure and, if necessary, also the proportionality of the measure in a narrower sense, i.e the moderation of the measure. If a measure is obviously inappropriate, it is needless to verify the necessity and the moderation of the measure. A measure is appropriate if it helps achieve the objective of the restriction. As regards appropriateness, a measure which, in no case, helps achieve the objective of the restriction is indisputably disproportionate. A measure is justified when the objective cannot be achieved by another measure which is less burdensome for a person and at least as effective as the former. In order to decide on the moderation of a measure, on the one hand, the extent and intensity of interference with the fundamental right and, on the other hand, the importance of the objective of the restriction have to be weighed. The more intensive the infringement of the fundamental right, the stronger justification is required for the infringement (see judgment of the Constitutional Review Chamber of the Supreme Court of 6 March 2002 in case no. 3-4-1-1-02, paragraph 15).

25. Charging of the state fee of 75 000 kroons on an action for establishment of the nullity of a resolution of the general meeting of a building association is an appropriate and necessary measure to ensure the economy of proceedings.

26. Subsequently, the Chamber will verify the moderation of the measure.

The increase of state fees upon recourse to a court involves a serious threat to the availability of legal protection and, in the event of doubt as to the proportionality of the state fee, such doubts should the thoroughly analysed by way of constitutional review. The higher the state fee, the more intensely the state fee restricts the general fundamental right to effective legal protection. If the amount of the state fee prevents a person from exercising his or her rights in court, the state fee is disproportionate and, therefore, unconstitutional.

In the framework of a specific review of regulations, the Chamber shall assess the conformity of a regulation with the Constitution on the basis of the facts of a specific court case.

Plaintiffs are natural persons who have filed an action for establishment of the nullity of a resolution of the general meeting of a building association. According to § 1(1) of the Building Association Act (BAA), a building association is a commercial association the purpose of which is to support and promote the economic interests of its members through joint economic activity in the ownership and administration of an

immovable or a right of superficies and of buildings which form a part thereof enabling the members of the building association sole use of specified parts of the buildings. Thus, a building association is a company based on membership. According to § 1(1) of the Commercial Associations Act, a commercial association is a company the purpose of which is to support and promote the economic interests of its members through joint economic activity in which the members participate as consumers or users of other benefits, as suppliers, through work contribution, through the use of services or in any other similar manner. At the same time, the Chamber notes that the essential character of a building association does not correspond to a traditional company the main objective of which is to earn income from economic activity. It is already obvious from the definition of a building association provided for in § 1(1) of the BAA. The economic activities of members of a building association mean the ownership and administration of an immovable or of buildings which form a part thereof. In such case, primarily administration of the ownership is the active activity. Administration of the ownership primarily means the maintenance of an immovable in the ownership of the building association together with the publicly used parts of the buildings thereon, and deciding on the incurring of expenses and the collection of financial resources necessary for the maintenance. It is also evident from § 2(3) of the BAA that members of the building association do not receive dividends or other payments from net profit, net profit may only be used to achieve the objectives of the association. Thus, it is disproportionate to pay the state fee of 75 000 kroons on an action the objective of which is not to obtain traditional proprietary benefit.

According to the materials of the civil matter, the main content of the dispute is whether to terminate the activities of the building association and divide garage units into physical shares (as decided by the general meeting of the defendant on 3 January 2008) or continue activities as a building association (as decided by the general meeting of the defendant on 18 December 2008, the resolutions of which have been contested by the plaintiffs). The Chamber notes that if the court decided to satisfy the action, it would not bring about changes in the value of the property of the plaintiffs. Membership in a building association may, according to §§ 8 and 9 of the BAA, be transferred and pledged. The value of membership, in general, corresponds to the value of the part of the building of which the member is granted use of. Therefore, upon termination of the building association, apartment ownership regarding a garage unit would replace the value of membership in a building association. Therefore, the state fee of 75 000 kroons for contesting a resolution of the general meeting of a building association is also disproportionate.

The Chamber also notes that the possibility prescribed by law to contest the resolutions of a body of a legal person must be actual, not only illusory. Filing of an action allows to ensure the lawfulness of the resolutions of the building association and, thus, protect the interests of all members.

27. The Supreme Court has admitted that in some cases, the requirement to pay the state fee of 200 kroons on appeals against rulings might not be moderate (judgment of the Constitutional Review Chamber of the Supreme Court of 17 July 2009 in case no. 3-4-1-6-09, paragraph 23). In this case, the state fee of 75 000 kroons required of plaintiffs is about six Estonian average wages and about seventeen Estonian minimum wages. If both of the plaintiffs pay the state fee of 37 500 kroons, then both plaintiffs must pay an amount corresponding to about three Estonian average wages and eight and a half minimum wages.

The European Court of Human Rights has repeatedly established that a state fee which is too high constitutes a violation of Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. For example, it has been found in the case *Mehmet and Suna Yigit vs. Turkey* that demanding a state fee in the amount of four minimum wages from a person with no income is violation of Article 6 (1) (judgment of the European Court of Human Rights of 17 July 2007 in case *Mehmet and Suna Yigit vs. Turkey*, paragraph 38).

28.

For the aforementioned reasons, the Chamber finds that the request of the Tallinn Circuit Court must be satisfied. § 131(2) and (3) of the CCP (to the extent where subsection (3) refers to subsection (2)) and Annex 1 to the SFA must be declared unconstitutional and invalid in the part which prescribes the obligation to pay the state fee of 75 000 kroons on an action for establishment of the nullity of a resolution of the general meeting of a building association.
