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By the decision of 25 January, the Supreme Court declared the fee rates stipulated in the Bailiffs Act (§ 35 (2) and (3)) unconstitutional; the decision will take effect after a period of six months.

The Civil Chamber of the Supreme Court was asked to settle a dispute over whether a debtor was obliged to pay the bailiff's basic fee, which was more than 10,000 euros for the case in question. In all the court instances, both the appellant as well as the Civil Chamber called into question the constitutionality of the regulation requiring the payment of the fee. The matter was referred for a hearing by the Supreme Court en banc, comprising 19 justices.

The Supreme Court en banc explained that when determining the fee, a bailiff is guided by the provisions of the law and there is no basis in the current Bailiffs Act for reducing the basic fee.

A bailiff's basic fee is a compulsory contribution under public law, resembling a levy. Its primary purpose is to cover the cost of a particular activity but also, for example, to pay for the reasonable remuneration of the bailiff and their office personnel as well as other necessary expenses. According to the Supreme Court en banc, the use of such cross-subsidisation is allowed, i.e. the coverage of the expenses accompanying the activity from the income received for other enforcement proceedings or activities.

They stressed, however, that the possibility to implement the principle of cross-subsidisation (i.e. the "settlement" of expenses) is not constitutionally unlimited. This means that the rate of the basic fee may not be excessively high when compared to the expected costs involved in meeting the relevant requirements. The Supreme Court en banc estimated that in the disputed matter, the fee rates are clearly higher than the expected costs of the proceedings.

The Supreme Court en banc postponed the enforcement of the invalidity of the provisions by a period of six months in order to give the Riigikogu time to adopt a constitutional set of rules.

DECISION [1]

Sincerely,

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