

**Dissenting opinion by Supreme Court Justices Villu Kõve, Oliver Kask, Kai Kullerkupp, Saale Laos, Vahur-Peeter Liin and Juhan Sarv to the Supreme Court *en banc* judgment of 8 June 2026 in Case No 5-25-49**

1. We disagree with the conclusion of the Court *en banc* that the Act Amending the Churches and Congregations Act (CCA) complies with the principle of legal clarity protected by § 13(2) of the Constitution (para. 83 of the judgment). Therefore, we find that the application by the President of the Republic should have been granted.

2. The Court *en banc* correctly notes in para. 54 of the judgment that, in determining whether doubts arising in the interpretation of a norm can reasonably be resolved, account must be taken of the field being regulated, the addressees of the norm, the purpose of the norms, the manner in which they developed, and the consequences of their application. The Court *en banc* then interprets the contested Act restrictively, so that it may be regarded as compatible with the Constitution. In our view, an assessment of these aspects in the present abstract constitutional review proceedings, conducted before the Act enters into force, should lead to the conclusion that the contested norms do not meet the minimum required standard of precision. Although not every instance of lack of clarity renders an Act unconstitutional, the proposed interpretation cannot be one that is not sufficiently discernible to the addressees of the Act from the wording of the Act itself (e.g. Supreme Court *en banc* judgment of 16 May 2008, 3-1-1-88-07, para. 31; Supreme Court Constitutional Review Chamber judgment of 9 December 2019, 5-18-7, para. 171). The more intensive the interference with fundamental rights, the clearer the norm must be.

3. Abstract *ex ante* review makes it possible to determine the constitutionality of legal norms even before they enter into force. It is precisely in the context of abstract review that the Supreme Court must be particularly mindful of ensuring that, when the contested law is applied in specific cases in the future, it does not allow for abuse or interpretations that are incompatible with the Constitution. In the present case, the Supreme Court could have prevented the entry into force of an ambiguous law that interferes with freedom of religion (protected by § 40 of the Constitution and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)) and freedom of association (protected by § 48 of the Constitution and Article 11 of the ECHR).

4. The European Court of Human Rights (ECtHR) has repeatedly emphasised that restrictions on the activities of a religious community as an organisation, permitted under Article 9(2) and Article 11(2) of the ECHR, must be prescribed by a law that meets the requisite standard of quality. This means, inter alia, that the effects of the law must be foreseeable for persons and that the law must afford legal protection against arbitrary interference by public authorities with the rights safeguarded by the ECHR (e.g. ECtHR [GC] judgment of 26 October 2000, *Hasan and Chaush v. Bulgaria*, No 30985/96, para. 84; ECtHR judgment of 17 July 2012, *Fusu Arcadie and Others v. the Republic of Moldova*, No 22218/06, paras 33–34). According to the OSCE/ODIHR 2019 Policy Guidance on Freedom of Religion or Belief and Security (“OSCE Policy Guidance”), it is necessary to avoid vaguely-defined terms that renders them open to differing interpretations and arbitrary application (page 25, para. 7(c)). The Venice Commission’s 2021 Compilation of Venice Commission Opinions and Reports concerning Freedom of Religion and Belief states that laws restricting freedom of religion must not be so vague that they fail to provide adequate information of what is required or allow for arbitrary enforcement (8 January 2021, CDL-PI(2021)001, e.g. pages 12, 22, 53, 54 and 58).

5. The lack of clarity identified by the President of the Republic in the new subsections 2<sup>1</sup> and 2<sup>2</sup> of § 3 and the new subsections 1<sup>1</sup> and 1<sup>2</sup> of § 4 of the CCA, when considered in conjunction with the other provisions of the CCA and its Amendment Act, is too significant to be overcome by

constitutionally compliant interpretation. The narrower interpretation of the contested provisions put forward by the Riigikogu and the Government of the Republic in their submissions during the court proceedings is insufficient to justify disregarding the wording of the Act and the conflicting views expressed during the legislative proceedings of the draft. The interpretation adopted by the Court *en banc* may not be consistent with the actual original purpose of the norms and the extremely broad scope for interpretation deliberately envisaged by the legislator (see e.g. Supreme Court *en banc* judgment of 3 January 2008, 3-3-1-101-06, para. 32). The Court *en banc* observes in para. 103 of the judgment that the same provisions may subsequently be found unconstitutional in specific constitutional review proceedings. In our view, given that the provisions grant such broad discretion to the executive, the Court *en banc* should have expressly acknowledged the deficiencies in the Act. It would then have remained for the Riigikogu – should it wish to amend the CCA – to adopt a new law that complies with the Constitution. We set out the reasons for our position below.

6. The prohibition laid down in the new provisions introduced by the Act Amending the CCA, referred to in the previous paragraph, applies – and, in the event of a violation of the prohibition, the Minister of the Interior *must* apply to a court for the compulsory dissolution of the association – where:

(1) an Estonian religious association or religious society (hereinafter ‘religious association’) is *affiliated* with an entity located in a foreign state (namely, a “spiritual centre, governing body, religious association or religious leader”); and

(2) that foreign entity poses a *threat* to the security or constitutional or public order of the Estonian state.

The *affiliation* (between the Estonian religious association and the entity located in a foreign state) may arise from (a) the *statutes*, or, (b) *another document governing its activities*, or (c) take the form of *economic affiliation*.

A *threat* (to Estonia) may exist where the entity located in a foreign state in question “incites, supports or finances activities aimed at changing the independence, territorial integrity or constitutional order of the Republic of Estonia by force, or supports or has supported military aggression, or has called for war, a terrorist offence or the unlawful use of armed force or violence in any other manner”.

7. All of the aforementioned concepts, both individually and in combination, require interpretation, which the Court *en banc* undertakes in paras 62–77 of its judgment. Where a provision imposing a restriction is formulated vaguely, this creates a risk that the fundamental right concerned will be restricted in an arbitrary and discriminatory manner. Freedom of religion is an important fundamental right which is also protected by all the principal international conventions safeguarding human rights. The dissolution of a religious association, which is the consequence provided for by the contested norms, constitutes serious interference with that fundamental right, since it affects all persons belonging to the religious community concerned. Therefore, the grounds for dissolving a religious association must be laid down with greater precision by a law (e.g. Supreme Court *en banc* judgment of 21 February 2017, 3-3-1-48-16, para. 38).

8. In assessing what kind of *affiliation* is intended by the contested Act, the Court *en banc* relies on the fact that the prohibition – initially included in the draft Act – on being affiliated with a foreign entity “confessionally or doctrinally” was omitted from the Act. In the view of the Court *en banc*, therefore, only administrative and organisational affiliation may be prohibited (paras 62–65 of the judgment). We agree that an interpretation that would also permit confessional or doctrinal affiliation to be prohibited could not be constitutional. Such an interpretation would interfere with matters lying

at the core of freedom of religion (see also paras 99 and 100 of the judgment). We note, however, that even though the contested provisions do not refer to “confessional or doctrinal” affiliation, neither do they contain any reference to “administrative and organisational” affiliation. Under the new subsection 2<sup>1</sup> of § 3 and the new subsection 1<sup>1</sup> of § 4 of the CCA, an Estonian religious association may not, “on the basis of the statutes or any other document governing its activities, [...] be *affiliated*” with a foreign entity listed in those provisions. The provisions in question do not specify the nature of the “affiliation” that is meant. A cause for concern is the fact that the explanatory memorandum, dated 23 January 2025, to the contested Act expressly mentions “affiliation on the basis of the statutes” as encompassing “the profession and practice of faith through religious rites and services” (see page 3; the same reference appears on page 1 of the explanatory memorandum of 11 June 2025). Moreover, in para. 87 of its opinion submitted to the Supreme Court on 18 November 2025, the Government of the Republic stated that a prohibition limited to hierarchical links or to management or administrative structures alone would not be sufficient. We consider that such a broad interpretation, which the wording of the Act indeed enables, would not be constitutionally permissible. In order to ensure legal clarity, the legal norm itself must make clear what kind of “affiliation” may be prohibited where the other conditions are met. In the present case, this is not apparent.

9. In paras 68 and 69 of the judgment, the Court *en banc* finds that the provisions of the contested Act referring to the *statutes and other documents on which the activities are based* must, in order to be interpreted consistently with the Constitution, be understood as referring only to documents which, under the statutes of the Estonian religious association, are binding on it or which otherwise regulate its principal activities in a manner equivalent to the statutes, and whose content the association itself is able to determine. In the view of the Court *en banc*, § 48(3) and (4) of the Constitution, read in conjunction with § 40(3) of the Constitution, do not permit the most severe consequence for a legal person – compulsory dissolution – to be imposed for something beyond its control. Although such an interpretation is the only possible one compatible with the Constitution, in our view it does not follow either from the wording of the Act or from the intention of the legislator (as reflected in the legislative history). On the contrary, in paras 77 and 78 of its opinion submitted to the Supreme Court on 18 November 2025, the Government of the Republic gave specific examples confirming that documents of the Russian Orthodox Church also constitute “other documents governing the activities” of the Estonian Christian Orthodox Church within the meaning of the new subsection 2<sup>1</sup> of § 3 of the CCA. Although the Court *en banc* gives the undefined legal concepts a meaning that is compatible with the Constitution, it is questionable whether this was also the intention of the legislator. Moreover, the application of a legal norm formulated in such vague terms to situations that have not yet been anticipated, and for which no answer can therefore be found in the legislative drafting materials, does not sufficiently protect religious associations against arbitrariness on the part of public authorities and potential discrimination.

10. Nor, as regards *economic affiliation*, does it follow from the wording of the Act that there must be a relationship of dependence (as the majority of the Court *en banc* found), even though the Government of the Republic argued this in its submissions to the Supreme Court (para. 70 of the judgment). We acknowledge that a legal norm must be abstract, but a specific reference to “economic dependence” would not have rendered the provision unduly narrow; rather, it would have contributed significantly to ensuring that restrictions on freedom of religion were foreseeable and justified.

11. The Court *en banc* also interpreted what constitutes a *threat* and *prohibited support* within the meaning of the contested Act (§ 3(2<sup>2</sup>) and § 4(1<sup>2</sup>) of the CCA), in the event of which an Estonian religious association’s affiliation with a foreign entity becomes prohibited. We agree that a “threat” may not mean an abstract threat, but must presuppose an actual threat arising from the circumstances of a specific case (para. 75 of the judgment). As regards “support”, the Court *en banc* finds in para.

76 of the judgment that, although the concept is undefined in terms of both time and scope, in that case, too, only a threat assessment of specific actions or views expressed can be decisive, not the mere one-off or past expression of views in itself. Such an interpretation does not follow from the wording of the provision. The provision in question (a foreign entity “supports or has supported military aggression, or has called for war, a terrorist offence or the unlawful use of armed force or violence in any other manner”) does not even require the aggression being supported, etc., to be connected with the Republic of Estonia or capable of having effects in Estonia. Nor can such a broad wording of the norm be justified by the fact that the contested Act was apparently drafted with a particular foreign entity in mind. The Act is universally applicable and its effects extend beyond individual cases. Regrettably, armed conflicts and violence are so prevalent throughout the world that such vague wording allows for the provision to be interpreted disproportionately broadly.

**12.** We consider that the wording used in the new subsections 2<sup>2</sup> and 1<sup>2</sup> of §§ 3 and 4 of the CCA, according to which a threat “may, among other things, arise where [...]”, does indeed afford those applying the provision a degree of discretion, as the Court *en banc* noted in para. 77 of the judgment; however, this does not necessarily imply only a restrictive interpretation; it also allows the Act to be applied more broadly and in a manner that is difficult for religious associations to foresee.

**13.** In our view, in assessing the legal clarity of the contested norms, account should have been taken of the fact that the new § 31<sup>2</sup>(1) of the CCA gives religious associations six months from the entry into force of the Act to bring their statutes and activities into line with the new requirements. If a religious association fails to do so, the Minister of the Interior *must* apply to a court for the compulsory dissolution of the existing religious association (§ 16(3) of the current CCA, which refers to § 14(2) clause 2, the latter also being amended by the contested Act). Therefore, understanding the Act is of existential importance to a religious association. In the court proceedings, the Riigikogu and the Government of the Republic explained that the purpose of the contested Act is not to create a possibility of immediately applying for the compulsory dissolution of a religious association, but rather that, following the entry into force of the Act, the Ministry of the Interior would first conduct administrative proceedings. No such obligation on the Ministry of the Interior follows from the Act. The contested Act neither provides for administrative proceedings prior to applying to a court nor requires a religious association to be notified that an entity with whom it has administrative and organisational links has become a threat within the meaning of the Act. The situation is even more problematic if the Act is applied in the future to circumstances that cannot presently be foreseen, in which religious associations have not been given a deadline to modify their activities. In such a case, compulsory dissolution proceedings will be initiated as soon as prohibited affiliation is established.

**14.** Most religious associations are hierarchical in the canonical sense, i.e. they are historically linked with a mother church through doctrine or structure. Indeed, § 5(2) of the CCA currently in force, which is also amended by the contested Act, lays down that the statutes of a religious association may provide for derogations from the provisions of the Non-profit Associations Act concerning membership and management where such derogations arise from the historically established doctrine and structure of a religious association. In the case of hierarchical religious associations, it cannot be assumed that any and all links can be severed overnight. Even if a religious association were theoretically able to sever its hierarchical relationships, it must be borne in mind that this may not be a mere formality – a change of jurisdiction presupposes the adoption of a different canonical order and hierarchy, which a religious association may not be forced to undertake without particularly compelling reasons (see also paras 100 and 101 of the Court *en banc* judgment).

**15.** In view of the foregoing, we find that, although the interpretation provided by the Court *en banc* limits the scope of application of the contested Act, the Act Amending the CCA itself does not comply

with the principle of legal clarity. Given the extremely broad wording of the Act Amending the CCA, the result is that the decision to apply for the compulsory dissolution of a religious association is left largely to the discretion of the executive. Having regard to the scope of the contested Act, its addressees, and the impact of compulsory dissolution as a consequence on all persons belonging to the religious community concerned, we find that the legislator has failed to fulfil its obligation to adopt legal norms that are sufficiently clear and comprehensible and in compliance with the Constitution (§ 3 and § 13(2) of the Constitution). Since the Act is formally unconstitutional, the application by the President of the Republic should have been granted.

**16.** Finally, we have misgivings as to whether the Act Amending the CCA is appropriate for achieving this objective within the meaning of § 11 of the Constitution. Even if a religious association severs all statutes-based and other links with a foreign entity posing a threat, this will not put an end to hostile influence operations conducted through any other channels. Anyone can follow the messages of a minister of religion located abroad via the internet and other media. Nor can it be presumed that such influence will cease if an Estonian religious association is compulsorily dissolved, since it may continue its activities, for example, in the form of a partnership. The OSCE Policy Guidance (page 34) acknowledge the risks associated with denial of legal personality or de-registration: a religious community may perceive that it is being discriminated against; they may become more susceptible to views associated with violent extremism, and this may contribute to their radicalisation. When applying the contested Act, care must also be taken to ensure that its application does not produce consequences contrary to the purpose of the Act.

(signed digitally)