



S U P R E M E C O U R T
CONSTITUTIONAL REVIEW CHAMBER
JUDGMENT

in the name of the Republic of Estonia

Case number	5-24-1
Date of judgment	18 April 2024
Judicial panel	Chair Villu Kõve, members Ivo Pilving, Juhan Sarv, Nele Siitam and Margit Vutt
Case	Application by the President of the Republic to declare unconstitutional the Act amending the Land Tax Act and the Taxation Act
Basis for proceedings	Application of 3 January 2024 by the President of the Republic
Participants in the proceedings	Riigikogu President of the Republic Government of the Republic Chancellor of Justice Minister of Justice
Manner of examination	5 March 2024, hearing
Persons attending the hearing	Hent-Raul Kalmo, Legal Adviser to and representing the President of the Republic Riigikogu Chancellery officials Kaido Jõgeva and Katre Tubro representing the Riigikogu Chancellor of Justice Ülle Madise and officials Evelin Lopman and Karolin Soo from the Office of the Chancellor of Justice Ministry of Finance officials Heili Jaamu, Artur Lundalin and Anneli Valgma representing the Government of the Republic Ministry of Justice official Kaidi Meristo representing the Minister of Justice

OPERATIVE PART

To declare unconstitutional the Act amending the Land Tax Act and the Taxation Act, adopted by the Riigikogu on 18 December 2023.

FACTS AND COURSE OF PROCEEDINGS

1. On 25 September 2023, the Government of the Republic initiated the Draft Act (297 UA, Riigikogu XV composition) amending the Land Tax Act and the Taxation Act (hereinafter the 'LTA Amendment Act' or the 'contested Act') which the Riigikogu accepted for legislative proceedings on 26 September 2023.
2. On 16 November 2023, before the second reading of the draft, the Government of the Republic decided to link the passing of the LTA Amendment Act to the issue of confidence.
3. On 23 November 2023, the Riigikogu adopted the LTA Amendment Act.

4. On 8 December 2023, by decision No 341 the President of the Republic declined to promulgate the LTA Amendment Act due to its conflict with the Constitution. The President proposed to the Riigikogu to deliberate the Act again and bring it into conformity with the Constitution.
5. On 18 December 2023, the Riigikogu again adopted the LTA Amendment Act without any changes.
6. On 3 January 2024, the President of the Republic declined to promulgate the LTA Amendment Act and applied to the Supreme Court seeking a declaration of the unconstitutionality of the Act.
7. On 5 February 2024, the President of the Republic submitted a supplement to the application, explaining his positions in the light of the opinions of the parties to the proceedings.

APPLICATION BY THE PRESIDENT OF THE REPUBLIC

8. The President finds that the contested Act is unconstitutional because it was not adopted in accordance with the appropriate procedure. Although § 98 of the Constitution does not expressly lay down the conditions under which the Government of the Republic may link a draft Act to the issue of confidence, the restrictive conditions imposed by other provisions and principles of the Constitution must be taken into account when interpreting this right. Those conditions were not met when the contested draft Act was linked to the issue of confidence.
9. If the Government links a draft Act to the issue of confidence, it essentially begins to exercise legislative power. This means that this procedure can only be used in exceptional cases. Too frequent linking of draft legislation to the issue of confidence or the use of such a measure to achieve objectives not arising from the Constitution may result in excessive interference by the Government in the activities of the legislator, restrict the competence of the Riigikogu (§ 65(1) Constitution), and violate the principle of separation and balance of powers (§ 4 Constitution) and the principle of democracy (§ 10 Constitution). Linking draft Acts to the issue of confidence may not be used to suppress parliamentary debate and, consequently, democracy as well.
10. A draft Act linked to the issue of confidence is processed with significant differences compared to the general procedure for processing draft Acts, which in turn restricts the rights of members of parliament significantly more than the ordinary procedure. In the case of the contested Act, linking it to the issue of confidence meant that the powers of the lead committee were transferred to the Government of the Republic, the Riigikogu did not vote on amendments to the draft Act, and Riigikogu members were not able to ask questions.
11. The Government and the Minister of Finance justified linking the draft Act to the issue of confidence by claiming that the amendments submitted were part of ongoing parliamentary obstruction, which was directed not only against this draft Act, but aimed at bringing the work of the Riigikogu to a standstill. Thus, the Government proceeded from the interpretation that linking draft Acts to the issue of confidence must be exceptional, but if obstruction is not exceptional then, under the Constitution, linking draft legislation to the issue of confidence may also be continuous.
12. Parliamentary obstruction belongs among the obstacles whose avoidance or overcoming by means of the issue of confidence is not in itself contrary to the Constitution. At the same time, not every form of obstruction justifies linking a draft Act to the issue of confidence. The latter only serves a constitutional objective if it is used to resolve a deadlock in relations between the parliament and the Government and the Government considers adoption of the draft Act unavoidable in terms of implementing its policy, i.e. it cannot implement its programme without adoption of the draft Act.
13. The Supreme Court has held that the parliamentary minority cannot obstruct the work of the Riigikogu to such an extent that the legislator becomes incapable of performing its constitutional duties. Thus, in the Government's own assessment, the draft Act in question constituted obstruction that was unlawful and amounted to abuse of the rights of the parliamentary minority. In order to overcome an unlawful obstacle to work, the Riigikogu itself has the opportunity to eliminate a permanent obstacle to its work, i.e. to use a method that is less intrusive of constitutional principles to overcome obstruction. Conflicts in the work of the parliament must first and foremost be resolved

by the Riigikogu itself. If obstruction is of the kind that the Riigikogu itself can avoid or overcome, then no need exists for the Government to exercise legislative power to resolve the conflict.

14. If we were to accept the interpretation that the Government can constantly link draft Acts to the issue of confidence in the event of ongoing obstruction, this would mean that the Constitution allows suppression of parliamentary debate and democracy as a consequence of obstruction. Such an interpretation cannot be consistent with the spirit of the Constitution.

15. According to the materials of the Constitutional Assembly, by creating § 98 of the Constitution the constitutional legislator wished to avoid a situation where, although the parliament declines to express no confidence in the Government, the Government is indirectly overthrown by obstruction to its work. The Constitutional Assembly wanted to give the Government the opportunity to force a parliament blocking its draft Act to choose between supporting the draft Act or accepting the Government's resignation.

16. If a majority exists in the parliament for adopting a draft Act, then linking it to the issue of confidence acquires a completely different purpose than was intended when enacting § 98 of the Constitution: the intention is not to influence members of parliament to support the draft Act, but an attempt is made to overcome a procedural obstacle.

17. Unlike in ordinary legislative proceedings, in the event of linking a draft Act to the issue of confidence, Riigikogu members vote not only on the draft Act but also on whether the Government must resign. In the case of the issue of confidence, the nature of the final vote changes. Even if members of parliament can largely exercise their normal procedural rights, the issue of confidence in the Government comes to the fore in the parliament's activities. However, members of parliament must be able to fulfil their legislative role, which includes the possibility to assess individual drafts regardless of whether they support the Government's overall political direction.

18. According to the materials for preparing the draft Act, its purpose is to reduce bureaucracy, save money and simplify collection of taxes. The Government has not justified why it considers the draft Act to be unavoidable in terms of implementing its policy. There is nothing to suggest that even in the Government's own opinion the adopted Act was unavoidably necessary in terms of implementing its programme.

19. Nor can we ignore the impact on Estonian parliamentary democracy of the position that in the present case linking the draft Act to the issue of confidence was constitutional. In that case, the exceptional nature of the issue of confidence is weakened. The Riigikogu itself no longer has an unavoidable need to resolve conflicts in the work of the parliament.

20. If ongoing obstruction entitles the Government to constantly link draft legislation to the issue of confidence, then a situation will arise where even a small group of Riigikogu members can render generally permissible a procedure which, according to the spirit of the Constitution, is exceptional. For example, members of one opposition party may choose unlimited obstruction as a tactic. It is doubtful whether in that case it would be appropriate to speak of a deadlock in the relationship between the parliament and the Government. Nor can it be said that linking draft Acts to the issue of confidence would lead to resolving the deadlock in that case. Rather, the consequence would be that even the remaining members of parliament would no longer be able to perform their constitutional duties. The activities of some Riigikogu members cannot entitle the Government to continue restricting the possibility of all other Riigikogu members to exercise their mandate.

21. In order for the requirement of unavoidability to fulfil its role and protect constitutional principles, the Government of the Republic must be able to demonstrate more than just that a draft Act promotes one of its political objectives. The unavoidability of a draft Act means that, without this draft, some of the Government's political objectives would not be achieved.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

[...]

EXAMINATION OF THE CASE IN THE SUPREME COURT

67. At the hearing of the Supreme Court Constitutional Review Chamber, the participants in the proceedings maintained their previous main positions, clarified them and answered the questions raised by the judicial panel.

CONTESTED ACT

68. The President contests the Act amending the Land Tax Act and the Taxation Act, adopted by the Riigikogu on 18 December 2023.

OPINION OF THE CHAMBER

69. The Chamber will first assess the admissibility of the application by the President of the Republic (I), then will deal with the constitutional prerequisites for linking a draft Act to the issue of confidence (II), and resolve the application (III).

I

70. Under § 107(2) of the Constitution and § 5 of the Constitutional Review Court Procedure Act (CRCPA), the President may apply to the Supreme Court to declare unconstitutional an Act passed by the Riigikogu but not promulgated by the President, if the Riigikogu has re-adopted it in unamended form after it was sent for fresh debate and decision (about the conditions for admissibility of the application, see also Supreme Court Constitutional Review Chamber judgment 5-19-38/15, paras 61–63).

71. In the present case, the President contests the Act on the ground of its formal conflict with the Constitution. An Act is constitutional only if it is in conformity with the Constitution both formally and substantively. Linking a draft Act to the issue of confidence is a matter of formal constitutionality of the Act and is subject to judicial review in constitutional review proceedings (see Supreme Court *en banc* judgment 5-20-3/43, para. 39). This means that the President may also contest an Act passed by the Riigikogu on the ground that it is unjustifiably linked to the issue of confidence.

72. Although the Riigikogu re-deliberated the contested Act and restrictions from linkage to the issue of confidence in that procedure were no longer arising, this cannot be considered a correction of the formal error pointed out by the President. The central consequence of linking the draft Act to the issue of confidence was that it was not possible to vote on amendments proposed to the draft (see paragraph 91 below) or shape the content of the Act by doing so. Even when re-deliberating an Act not promulgated by the President, the provisions of Division 7 of Chapter 11 of the Riigikogu Rules of Procedure and Internal Rules Act (RRPIRA) bar Riigikogu members from making amendments to the Act, and they can only vote on whether to adopt the Act in its unamended form. As a result, re-deliberation of the draft Act did not in itself remedy the deficiency pointed out by the President. By a resolution of the majority of the Riigikogu, it was possible not to pass the Act in its unamended form, to send the draft to the lead committee and to enable submission of amendments (§ 114(5) RRPIRA), but the Act was again passed in its unamended form.

73. In conclusion, the President's application is admissible.

II

74. In the present case, the main issue in dispute is whether the constitutional prerequisites for linking the draft Act to the issue of confidence were met in the course of proceedings of the draft LTA Amendment Act. The parties to the proceedings agree that the parliamentary minority used obstruction to impede proceedings of the draft and that this was part of a longer-term and more extensive obstruction to the work of the parliament, but they disagree on the circumstances in which it is permissible to link adoption of a draft Act to the issue of confidence in order to overcome obstruction.

75. Under § 98 of the Constitution, the Government of the Republic may link adoption of a draft Act that it has submitted to the Riigikogu to the issue of confidence (subsection 1). Voting cannot take

place earlier than on the second day after the draft Act was linked to the issue of confidence, and if the Riigikogu does not pass the draft Act the Government resigns (subsection 2). The Constitution does not expressly specify the conditions under which the Government may link a draft Act to the issue of confidence.

76. The Supreme Court *en banc* has found that the purpose of linking a draft Act to the issue of confidence is to enable the Government to implement its policy (§ 87(1) Constitution), and that this measure provided for in the Constitution was and is primarily created to resolve a deadlock that has arisen in relations between the Government and the Riigikogu. In the opinion of the Court *en banc*, linking a draft Act to the issue of confidence in order to avoid or overcome obstruction is not, in itself, contrary to the Constitution. This is because obstruction may excessively hinder the work of the parliament, leading to possible delay in adoption of a draft Act submitted by the Government. Linking a draft Act to the issue of confidence complies with the aim arising from the Constitution if it is used to resolve a deadlock in relations between the parliament and the Government and, in the Government's opinion, adoption of the draft Act is indispensable in terms of implementing its policy. (Supreme Court *en banc* judgment 5-20-3/43, paras 39.2 and 39.5.)

77. At the same time, the Court *en banc* found that proceedings of a draft Act linked to the issue of confidence primarily restrict opportunities for the opposition to raise parliamentary debate related to the draft, which is why too often linking drafts to the issue of confidence or using this measure to achieve objectives not arising from the Constitution may lead to excessive interference by the Government in the activities of the legislator and restrict the Riigikogu's constitutional competence to pass Acts or resolutions. It may also violate the principles of separation and balance of powers and democracy. As a result, this procedure can only be used in exceptional cases. Linking a draft Act to the issue of confidence may not be used to suppress parliamentary debate and, consequently, democracy as well. (Supreme Court *en banc* judgment 5-20-3/43, paras 39.3 and 39.5; see also Supreme Court Constitutional Review Chamber judgment 5-23-31/18, para. 53.)

78. The above-mentioned principle of separation and balance of powers (§ 4 Constitution) does not imply isolating branches of power from each other. The balance of branches of power means the possibility to interfere with each other's activities to a certain extent, if necessary to ensure the functioning of the system of constitutional bodies as a whole. One such means of balancing is the possibility for the Government, provided for in § 98(1) of the Constitution, to link adoption of a draft Act to the issue of confidence. However, this must not lead to violation of the constitutional competence of the Riigikogu. As mentioned, linking a draft Act to the issue of confidence curtails opportunities for parliamentary debate. In addition, depending on the stage of proceedings at which the Government links the draft to the issue of confidence, the possibility for all members of parliament to table and deliberate amendments and thus participate in the legislative process is reduced to a greater or lesser extent (see paragraph 91). Although the Constitution does not expressly say so, the right to submit amendments to draft Acts is an important part of the mandate of a Riigikogu member and parliamentary legislative procedure (see Supreme Court Constitutional Review Chamber order 5-23-41/5, para. 32). The Chamber also agrees with the President that, regardless of procedural restrictions, linking adoption of a draft Act to the issue of confidence always restricts freedom of decision by Riigikogu members because, instead of problems resolved by the specific draft Act, the question whether the Government must resign comes to the fore. Linking draft Acts too lightly or too often to the issue of confidence places members of parliament in a situation where they cannot fulfil their usual legislative role, but have to make choices based solely on their attitude towards the Government's political direction as a whole. It is also not insignificant that alternate Riigikogu members replacing those Riigikogu members who went to the Government from the Riigikogu will essentially vote on preservation of their position when passing a draft Act linked to the issue of confidence.

79. Obstacles to the work of the parliament must be removed primarily by the Riigikogu itself, and ensuring the Riigikogu's working capacity is the duty of all members of the parliament, which they

are required to fulfil by their oath of office (§ 61(2) Constitution). When implementing its will, the Government must take into account the constitutional requirements of the parliamentary decision-making process. (See also Supreme Court Constitutional Review Chamber judgment 5-23-31/18, para. 53.) A situation where a parliamentary minority uses obstruction to impede legislative proceedings of a draft Act in the Riigikogu is first and foremost a confrontation between the parliamentary majority and minority, not necessarily a deadlock in the relationship between the parliament and the Government. If the Government as an institution attempts to overcome an obstacle that has arisen in Riigikogu proceedings, which the Riigikogu itself can effectively remove, this does not amount to use of a measure prescribed in the Constitution for the purpose of balancing powers, but excessive interference in the work of another branch of state power.

80. The long-term and extensive nature of obstruction are not in themselves circumstances that would give the Government a basis to link a draft Act to the issue of confidence. The extent of obstruction alone does not mean that the parliament itself does not have the means to overcome it. Obstruction must be tolerated by other Riigikogu members only to the extent that it does not paralyse the work of the parliament in the long term and extensively. By obstructing the work of the Riigikogu for a long time, members of parliament who use obstruction abuse their rights, which may even grow into a threat to the constitutional order. (Supreme Court Constitutional Review Chamber judgment 5-23-31/18, para. 52; 5-23-37/6, para. 53.) The long-term and extensive nature of obstruction that paralyse the work of the parliament justify the Riigikogu and its bodies in taking measures to ensure their ability to work. At the same time, such measures may not amount to unjustified or excessive restriction of the rights arising from the mandate of (minority) Riigikogu members. Judicial review of the formal constitutionality of an Act also includes the question whether the Riigikogu complied with procedural requirements, including the rights of Riigikogu members, when adopting it (see Supreme Court Constitutional Review Chamber judgment 5-23-41/5, para. 34). To a certain extent, the parliamentary majority must tolerate obstruction as a tool of political struggle and parliamentary work (see Supreme Court Constitutional Review Chamber judgment para. 5-23-31/18, para. 52; 5-23-37/6, para. 53).

81. Whether the parliament itself is able to effectively remove the obstacle must be assessed on a case-by-case basis, taking into account, inter alia, the urgency and unavoidability of the draft Act from the point of view of implementing Government policy.

III

82. Next, the Chamber will assess whether in the present case linking the draft Act to the issue of confidence was constitutional.

83. The Government of the Republic linked with the issue of confidence a draft Act which was intended to update the rules for electronic service of documents in tax proceedings in order to increase the tax authority's "ability to perform its functions purposefully and efficiently, to reduce resources and the workload involved in preparing and delivering paper documents, as well as to contribute to environmental protection and sustainable development through increased digitisation" (explanatory memorandum by the initiator to draft Act 297 UA, XV Riigikogu, page 1). According to the explanatory memorandum to the draft Act, implementation of the Act will reduce the direct costs of the Tax and Customs Board (postage costs for sending paper letters) by approximately 25 000 euros a year (*ibid.*, page 13). In the Government's opinion, the main purpose of linking the draft Act to the issue of confidence was to overcome the deadlock between the parliament and the Government that had arisen due to long-term obstruction and to prevent the legislative process from stalling. The President also does not deny that the draft Act was linked to the issue of confidence in order to overcome obstruction used in the proceedings, but finds that the Riigikogu could have used other means to achieve this.

84. The opposition Estonian Conservative People's Party group in the Riigikogu and its members submitted 200 amendments to the contested draft Act before its second reading. The content of all the amendments was to amend § 54(3) of the Taxation Act (§ 2(7) of the contested Act) so that different periods (6–205 working days) were proposed during which a document forwarded to a legal person

via the e-Tax Board would be deemed to have been delivered. In the present case, the combination of the large number of amendments and their mutually exclusive nature clearly indicate obstruction (cf. Supreme Court *en banc* judgment 5-20-3/43, para. 39.4 and Supreme Court Constitutional Review Chamber order 5-23-41/5, para. 37).

85. No one else submitted amendments to the draft Act. Nor have the participants in the proceedings claimed that, in addition to submission of amendments, obstruction took place in the Riigikogu in other ways in order to delay the draft Act.

86. Obstruction directed against the draft Act in question must be seen in context. It was part of an extensive obstruction of work initiated by the parliamentary minority already when the XV composition of the Riigikogu convened, the various forms of which aimed at paralysing Riigikogu work have been addressed by the Chamber in several earlier constitutional review cases (see Supreme Court Constitutional Review Chamber judgments 5-23-31/18 and 5-23-37/6; Supreme Court Constitutional Review Chamber order 5-23-41/5).

87. Next to be assessed is whether in the present case the Riigikogu could have used other effective measures to overcome obstruction, which would have interfered less with the rights of Riigikogu members and the principle of separation of powers. In doing so, it must be taken into account that proceeding from the right of self-organisation (§ 4 and § 65 clause 16 Constitution) the parliament enjoys extensive discretion in assessing and deciding organisational and procedural matters of its work (e.g. Supreme Court Constitutional Review Chamber judgment 5-23-31/18, para. 31).

88. The Chamber agrees with the Riigikogu that, where obstruction consists of submission of numerous amendments, in the ordinary proceedings of a draft Act the lead committee could have merged amendments for the second reading of the draft in such a way that they would also have been voted on in the plenary as one batch. According to the Riigikogu, this tool has been used before, but since the Riigikogu has so far not had to overcome long-term obstruction, the practice of combining amendments has not been clearly established and the committee did not make such a decision in the case of the contested draft Act.

89. It is not possible to foresee and exhaustively regulate all issues arising in the work of the Riigikogu, including all possible obstacles to work, in the Riigikogu Rules of Procedure and Internal Rules Act (RRPIRA). However, even if measures for extensive and systematic paralysis of the work of the Riigikogu and the conditions for their implementation are set out incompletely or inaccurately in the RRPIRA, the bodies of the Riigikogu, e.g. the Board on the basis of § 13(2) clause 18 of the RRPIRA (Supreme Court Constitutional Review Chamber judgment 5-23-31/18, para. 46), as well as the Riigikogu plenary assembly by its organisational resolution on the basis of the right of self-organisation, may implement essential measures that are directly based on the principles of the Constitution. The Supreme Court has found that deviation from the procedural rules of the parliament (e.g. procedural deadlines) is not necessarily unlawful in a situation of obstruction if this is justified by the overriding objective of ensuring the working capacity of the Riigikogu and protecting the rights of Riigikogu members who are not participating in obstruction. (Supreme Court Constitutional Review Chamber judgment 5-23-37/6, paras 69 and 74.) However, as stated, the parliamentary majority must tolerate obstruction to a certain extent (see paragraph 80). Nor may the parliamentary majority impose any numerical, formal or substantive restrictions on amendments tabled (by the minority) that excessively limit the possibility of participating in the legislative procedure.

90. The participants in the proceedings have not argued that voting on amendments as a batch or any other measure implemented by the Riigikogu or its bodies enabling faster and simpler processing of amendments could not have ensured overcoming obstruction and processing the contested draft Act within a reasonable time.

91. Unlike measures implemented by the Riigikogu itself, linking a draft Act to the issue of confidence constitutes interference by the Government in the exercise of legislative power and in the rights of those members of the parliament who did not use obstruction. Arising from § 98(2) of the Constitution and Division 2 of Chapter 16 of the RRPIRA, proceedings of a draft Act linked to the issue of

confidence take place with significant distinctions in comparison to the general procedure for dealing with draft legislation laid down in Chapter 11 of the RRPIRA. In the event of linking a draft Act to the issue of confidence before its second reading, the duties of the current lead committee end and are transferred to the Government. The Government will review and decide on taking into account amendments submitted to the draft and will prepare the text for the second reading of the draft, as well as the explanatory memorandum and the list of amendments. The draft Act is placed on the Riigikogu agenda at the time set by the Government, no voting takes place on amendments proposed to the draft, and the draft can be adopted at the second reading (§ 137 subsections (2), (3), (6) and (7) RRPIRA; see also Supreme Court Constitutional Review Chamber judgment 5-20-3/43, para. 39.1). Thus, the main consequence of linking a draft Act to the issue of confidence is that although submission of questions and deliberation of the draft in the Riigikogu plenary assembly is not completely ruled out, only the Government can make amendments to the draft. The Riigikogu will only decide whether to pass or reject the draft Act in the form proposed by the Government.

92. Within the framework of ordinary legislative procedure, the measures taken by the Riigikogu and its bodies to overcome obstruction will primarily result in restricting the rights of members of parliament who wish to obstruct the work of the Riigikogu. On the other hand, linking a draft Act to the issue of confidence entails a uniform restriction of the rights of all members of parliament (see also paragraph 78).

93. In addition to the above, the Chamber agrees with the Government that the ruling coalition has the right to determine its own political objectives and that adoption of the contested draft Act can be associated with programmatic objectives mentioned by the Government (moving towards a balanced state budget, reducing overregulation and bureaucracy). At the same time, it is not possible to agree that the unavoidability of a draft Act from the point of view of implementing Government policy can only be assessed by the Government itself and judicial review is excluded in this matter. The mere fact that the purpose of a draft Act can be associated with the Government action programme does not mean that its adoption is unavoidable in terms of implementing Government policy. Linking a draft Act to the issue of confidence is primarily justified by its special weight in terms of fundamental political matters. In the court proceedings, no arguments were presented that would convince the Chamber of the fundamental importance of the draft Act.

94. The Government has also justified linking the draft Act to the issue of confidence by the need for urgent proceedings. The Chamber does not see a compelling reason that would have required the draft Act to be processed more quickly than usual. The Riigikogu has confirmed that the proceedings of the draft Act were not unreasonably delayed, although due to obstruction of work its adoption might not have taken place by the time planned by the Government. However, taken in isolation, the latter cannot be a reason for linking the draft Act to the issue of confidence.

95. Linking draft Acts to the issue of confidence should be exceptional (see paragraph 77). During the mandate of the XV composition of the Riigikogu, the Government has linked more than 20 draft Acts to the issue of confidence, while during all the previous Riigikogu compositions the Government has linked a total of 13 drafts to the issue of confidence. The Chamber agrees with the Chancellor of Justice that the increasingly frequent linking of draft Acts to the issue of confidence may indicate that a measure planned by the constitutional legislator as extraordinary is being used too lightly.

96. In conclusion, the Chamber is of the opinion that linking adoption of the LTA Amendment Act to the issue of confidence was unconstitutional because obstruction used in the proceedings of that draft could have been overcome in other ways. Furthermore, the alleged time pressure in combination with the need to implement Government policy (see paragraphs 93 and 94) were not sufficiently compelling in the present case to make adoption of the draft Act unavoidable in terms of implementing Government policy and to justify instances of interference arising from linking the draft Act to the issue of confidence (see paragraph 78).

97. In view of the foregoing, the Chamber satisfies the application by the President of the Republic and, proceeding from § 15(1) clause 1 of the Constitutional Review Court Procedure Act, declares

unconstitutional the Act amending the Land Tax Act and the Taxation Act, adopted by the Riigikogu on 18 December 2023.

98. The Supreme Court draws attention to the fact that the Chancellor of Justice has also raised the issue of the substantive constitutionality of the provisions contained in the contested Act. On the one hand, electronic service of a document and the related fiction (“deemed to have been delivered”) helps to save public funds and mitigates the risks associated with malicious intent on the part of the addressees of a document. On the other hand, this means a significant interference with the fundamental rights of non-profit associations and foundations, as the time-limit for appeal may start to run and upon its expiry – if the person was unable to obtain the document for a compelling reason – they may lose the opportunity to effectively protect their rights in relations with the tax authority. In order to mitigate possible risks, when re-examining the draft it would be expedient for the Riigikogu to assess the substantive constitutionality of the provisions of the contested draft Act in the light of the arguments raised by the Chancellor of Justice, in order to find a balance between the public interests and protection of the fundamental rights of persons.

(signed digitally)