



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	5-25-79
Date of judgment	23 March 2026
Judicial panel	Chair Villu Kõve; members Oliver Kask, Saale Laos, Nele Siitam and Margit Vutt
Case	Constitutional review of § 7(2) of the Act on Granting International Protection to Aliens
Basis for proceedings	Tallinn Circuit Court of Appeal judgment of 17 December 2025 in administrative case No 3-24-1531
Participants in the proceedings	Riigikogu Applicant XX Police and Border Guard Board Chancellor of Justice Government of the Republic, representative Minister of the Interior Minister of Justice and Digital Affairs
Manner of examination	Written procedure

THE SUPREME COURT DECIDES AS FOLLOWS

- 1. To declare unconstitutional and invalid § 7(2) of the Act on Granting International Protection to Aliens to the extent that it fails to consider a refugee's *de facto* cohabiting partner who lived with the refugee before the refugee's arrival in Estonia to be the refugee's family member with whom marriage or registration of a registered partnership was legally impossible in the refugee's country of origin regardless of the will of the partners.**
- 2. To replace the names of the applicant and their partner with alphabetical characters in the published judgment.**

FACTS AND COURSE OF PROCEEDINGS

- 1. XX (the applicant) is a citizen of the Russian Federation (RF) who has been granted international protection in the Republic of Estonia (recognised as a refugee) and who has been granted a residence permit.**

2. On 20 February 2024, the applicant applied to the Police and Border Guard Board (PBGB) for family reunification so that their partner of the same sex by birth, a citizen of the RF YY (partner), could be reunited with them in Estonia. The applicant and their partner are not married or in a registered partnership. In their country of origin, the RF, LGBT people are not able to legalise their relationship. The applicant learned to know their partner online in 2012, they met for the first time in 2013 and they have been living together since 2014.

3. By its decision of 16 May 2024, the PBGB denied the applicant's application. Although the applicant proved that they had a relationship with their partner in the RF and they were unable to enter into marriage or register a partnership in the country of origin, the partner cannot be considered a family member of the alien recognised as a refugee under § 7(2) and (5) of the Act on Granting International Protection to Aliens (AGIPA). According to the AGIPA, a person recognised as a refugee in Estonia can only be reunited with their spouse or registered partner with whom they had a family in the country of origin.

4. On 21 May 2024, the applicant filed a complaint with Tallinn Administrative Court for annulment of the PBGB decision. Section 7 of the AGIPA does not regulate a situation where it is not possible to register a marriage or cohabitation in the country of origin. If the court finds that § 7(5) of the AGIPA cannot be interpreted expansively, this provision must be declared unconstitutional and not applied with regard to the requirement to enter into a marriage or register a partnership.

5. By judgment of 1 November 2024 in administrative case No 3-24-1531, Tallinn Administrative Court denied the complaint. An expansive interpretation of the AGIPA is not justified and the fact that an unregistered partner cannot be considered a family member under the AGIPA does not contravene the Constitution. The applicant and the partner could have legalised their cohabitation in a country other than the country of origin. Under § 7(2) of the Registered Partnership Act, a registered partnership registered abroad is deemed to be valid in Estonia in accordance with the provisions of § 55(3) of the Private International Law Act.

6. In their complaint, the applicant sought the judgment of Tallinn Administrative Court to be overturned and a new decision entered in the case to satisfy their application for family reunification.

7. By judgment of 17 December 2025, Tallinn Circuit Court of Appeal satisfied the applicant's appeal. The Circuit Court of Appeal overturned the Administrative Court judgment and the PBGB decision of 16 May 2024 and obliged the PBGB to re-examine the applicant's application for family reunification. The Circuit Court of Appeal declared unconstitutional and set aside § 7(2) of the AGIPA to the extent that it fails to consider a refugee's *de facto* cohabiting partner who lived with the refugee before the refugee's arrival in Estonia to be the refugee's family member with whom marriage or registration of a registered partnership was legally impossible in the refugee's country of origin regardless of the will of the partners. The Circuit Court of Appeal justified its judgment as follows.

8. The following facts are not in dispute in this case: the applicant is a transgender woman who is a citizen of the RF; the applicant has a same-sex partner who is also a citizen of the RF; the cohabitation between the applicant and their partner was genuine before leaving the RF and they formed a family; the law of the RF does not lay down a possibility for persons of the same sex to marry or enter into a registered partnership.

9. Under § 7(2) clauses 1 and 1¹ of the AGIPA, a refugee's family member is their spouse or registered partner. Subsection 7(5) of the AGIPA lays down that the family members specified in the same Act are deemed to be a family if the family existed in the country of origin, including if the marriage or registered partnership was entered into before arriving in Estonia. The norms cited do not allow the law to be interpreted so that a refugee's unregistered partner could also be regarded as the refugee's family member.

10. The definition of a family member in § 7(2) clauses 1 and 1¹ of the AGIPA is not in conflict with Directive 2003/86/EC of the Council of the European Union (EU) of 22 September 2003 on the right to family reunification (Directive 2003/86). Directive 2003/86 leaves it to the discretion of a Member State to decide whether to grant a partner the same rights as their spouse. An issue not regulated by EU law or in which it leaves discretion to a Member State can be resolved through constitutional review in case of doubt.

11. The lack of a legal basis for issuing a residence permit to the partner of a refugee residing in Estonia on the basis of a residence permit (§ 7(2) clauses 1, 1¹, (5) and § 46 of the AGIPA, in combination) for leading a family life in Estonia interferes with the fundamental right to family of a refugee seeking family reunification protected by §§ 26 and 27 of the Constitution as interpreted by the Supreme Court (Supreme Court *en banc* judgment of 21 June 2019, 5-18-5/17, para 47–48, 52; Supreme Court Constitutional Review Chamber judgment of 28 September 2021, 5-21-4/13, para. 38). Although, unlike an Estonian citizen, a foreigner does not enjoy the constitutional right to reside in Estonia (§ 36(1) Constitution), this right may arise for a foreigner from a residence permit issued on the basis of a law. A foreigner cannot settle in Estonia without a residence permit. As the partner of a refugee is not considered to be the refugee's family member within the meaning of § 7(2) of the AGIPA, it is not possible to issue a residence permit to the applicant's partner under § 46 of the AGIPA and they cannot live together in Estonia. In addition, the disputed lack of a legal basis interferes with the applicant's fundamental right to equality (§ 12(1) Constitution). The interference arises from the impossibility of entering into a marriage or registering a partnership of same-sex persons in the RF in conjunction with the provisions of § 7(2) of the AGIPA. The applicants, as persons of the same sex, are unable to fulfil the prerequisites of § 7(2) clause 1 or 1¹ of the AGIPA in their country of origin.

12. The fundamental right to family and the fundamental right to equality are not unlimited (§ 11 Constitution). Interference with the fundamental right to equality must be reviewed in conjunction with interference with the fundamental right to family. Interference with foreigners' fundamental right to family is justified by the values expressed in the preamble to the Constitution, including the obligation of the Estonian state to ensure the protection of internal peace and the preservation of the Estonian nation. These aims can be achieved by the state if it has the right to decide whether and under what conditions to admit foreigners into the country. The current measure is appropriate for achieving such aims, but not necessary, as the aims can be achieved by means that are less intrusive of fundamental rights. The state can lay down rules that allow to assess the authenticity of people's cohabitation and the specific threat arising from a specific person, and to refuse to issue a residence permit to a person in the case of whom no such prerequisite exists or a risk arises. Nor is the measure proportional in the narrow sense in the specific case. In defining a family member, the requirement of marriage or registered partnership is not disproportionate in itself. In the specific case of the applicant and their partner, it is rendered disproportionate by the legal impediment beyond their control to enter into marriage or register a partnership in the refugee's country of origin. In this regard, the applicant's international protection status must be taken into account. In the case of a

refugee, it cannot be assumed that they will be able to move freely around the world and find the opportunity to marry or register a partnership in a third country before applying for international protection, especially considering the citizenship of the RF held by the specific persons and the fact that they are of the same sex.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

[...]

PROVISION DECLARED UNCONSTITUTIONAL

30. Section 7(2) of the AGIPA in the following part („Family member“):

„(2) Family members of a refugee and of a person eligible for subsidiary protection are:

1) their spouse;

1¹) their registered partner; [---]“

OPINION OF THE CHAMBER

31. The Chamber will first deal with the relevance of § 7(2) of the AGIPA and the admissibility of the application by Tallinn Circuit Court of Appeal (I), it will then assess the relevant fundamental rights and interference with them (II) and the constitutionality of interference (III).

(I)

32. Within specific constitutional review proceedings initiated on the basis of an application by a court of first or second instance, the Supreme Court may invalidate or declare unconstitutional a legislative act or a provision thereof, as well as failure to issue a legislative act which was relevant to adjudicating the case (§ 9(1) and § 14(2) (first sentence) Constitutional Review Court Procedure Act). A provision is deemed relevant if it is of decisive importance for resolving the case, i.e. if in the event of its unconstitutionality the court should decide differently than if it were constitutional (Supreme Court *en banc* judgment of 28 October 2002, 3-4-1-5-02, para. 15; 15 March 2022, 5-19-29/38, para. 49; 14 May 2025, 3-22-246/31, para. 23).).

33. Tallinn Circuit Court of Appeal initiated constitutional review proceedings while adjudicating an administrative matter in which a foreigner recognised as a refugee challenged the decision of the PBGB by which their application for family reunification was denied because they were not married or in a registered partnership with their *de facto* partner. The application by Tallinn Circuit Court of Appeal is admissible if § 7(2) of the AGIPA was relevant to adjudicating the administrative matter to the extent that the Circuit Court of Appeal questioned its constitutionality. When deciding on the admissibility of the application by the Circuit Court of Appeal, it is also necessary to check the link to EU law, as well as to assess whether it is possible to interpret the contested Act in conformity with the Constitution.

a) The relevance of § 7(2) of the AGIPA

34. Under § 7(2) clauses 1 and 1¹ of the AGIPA, a refugee's family member is their spouse or registered partner. In line with § 7(5) of the AGIPA, a family must already exist in the country of origin and the marriage or partnership must have been entered into before the person who

has been granted protection arrives in Estonia. A refugee's family member can apply for a residence permit on the basis of § 46 of the AGIPA if they are considered a family member of the person who has been granted international protection.

35. It is not in dispute in the administrative matter that (1) the applicant is a citizen of the RF who has been recognised as a refugee by Estonia; (2) the applicant has a same-sex partner who is also a citizen of the RF; (3) the cohabitation between the applicant and their partner was genuine before leaving the RF and they formed a family; (4) the legislation of the Russian Federation does not lay down the possibility for persons of the same sex to marry or enter into a registered partnership. Thus, the applicant had a *de facto* cohabitating partnership in the country of origin with the person with whom they sought to reunite in Estonia, but it was not legally possible for them to marry or register a partnership in the country of origin before the applicant's arrival in Estonia. According to § 7(5) of the AGIPA, it is not presumed that the marriage or partnership has been entered into in the country of origin, but it is required that it has been done before coming to Estonia. The Chamber is of the opinion that, in the present circumstances, the Circuit Court of Appeal has correctly based its finding of unconstitutionality on the legal impossibility of such action by the refugee and their partner in the country of origin.

36. A refugee is a foreigner who, owing to a well-founded fear of persecution on grounds of race, religion, ethnicity, political opinion or membership of a particular social group, is outside their country of origin and is unable or, owing to such fear, is unwilling to receive protection of that country and in respect of whom no circumstance exists precluding recognition as a refugee (first sentence of § 4(1) of the AGIPA). The circumstances that give rise to a claim for international protection often arise unexpectedly and an applicant cannot be expected to foresee them. In addition, an applicant who is fleeing must apply for protection in the first safe country (§ 20¹ clause 7 AGIPA). Given the above, a refugee cannot be expected to be able to move freely around the world and find an opportunity to marry or register a partnership in a third country before applying for international protection. In the present case, the free movement of persons could also have been restricted by the citizenship of the RF. It should also be taken into account that this is a same-sex couple who would not have been able to legalise their partnership everywhere. The Supreme Court *en banc* has conceded that if the possibility of same-sex persons to enter into marriage is restricted, this constitutes a legal impediment beyond the control of the persons in the exercise of their fundamental rights (Supreme Court *en banc* judgment of 21 June 2019, 5-18-5/17, para. 63).

37. Thus, § 7(2) of the AGIPA was relevant to adjudicating the administrative case in the manner formulated by the Circuit Court of Appeal, in connection with the legal impossibility of marrying or registering one's cohabitation with a *de facto* partner in the refugee's country of origin.

b) Link to EU law

38. Under Article 4(1)(a) of Directive 2003/86, which is applicable in the present case, a Member State must allow the spouse of the person applying for family reunification [i.e. sponsor] to reside in its territory. Article 4(2) and (3) of Directive 2003/86 provides for the possibility for a Member State to grant such authorisation to other persons. Under Article 4(3), a Member State may authorise the entry and residence, pursuant to the same Directive and subject to compliance with the conditions laid down in Chapter IV („Requirements for the exercise of the right to family reunification“), of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship. In the case

of this alternative, it is important that the long-term relationship is properly proven. If no official documents exist proving the family relationship, other evidence of the relationship is assessed in accordance with national law (Article 11(2) of Directive 2003/86).

39. In the present case, there was no dispute in the administrative case that the applicant and their partner had a stable relationship. Nor did the PBGB claim that the requirements set out in Chapter IV of Directive 2003/56 were not met, i.e. that the partner would pose a danger to public order, public security or public health. In other respects, under Directive 2003/86, this is a matter falling within the competence of the Member States, and the Estonian state has the discretion to authorise reunification with a partner in a stable relationship. Thus, the constitutionality of the absence of such a right must be assessed, also taking into account the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as it is in turn interpreted by the European Court of Human Rights (ECtHR) (cited in 5-18-5/17, para. 50).

c) The possibility of constitutionally compliant interpretation

40. Under § 7(2)1) of the AGIPA, which was in force before 1 January 2024, only the spouse was deemed to be a family member who is the partner of a refugee and of a beneficiary of subsidiary protection. Under § 7(2) clauses 1 and 1¹ of the AGIPA, which is in force as of 1 January 2024, both the spouse and the registered partner are family members of a refugee and of a beneficiary of subsidiary protection. The amendment was introduced by the Act on amending the Family Law Act and Other Related Acts, which established marriage equality regardless of sex (XV Riigikogu composition, 207 SE). According to the 2023 explanatory memorandum to the Draft Act, the purpose of the Act was to create a legal framework for marriage equality and to ensure that the rights and duties arising from the Registered Partnership Act could also be realised in practice. The adopted Act ensured that several rights that had previously been reserved for spouses also apply to registered partners.

41. The same Act (RT I, 06.07.2023, 6) amended the AGIPA and the Aliens Act and added a registered partner to the definition of a family member. According to the explanatory memorandum to the Draft Act, cited above, the close personal and economic relations of these persons, their mutual maintenance obligation and the presumed common home and household were taken into account. The amendment was intended to ensure legal clarity and the protection and preservation of the family ties of registered partners. The purpose of amending the AGIPA was to ensure uniformity with the Aliens Act, which in turn was amended in order to bring the current law into conformity with the Constitution based on Supreme Court case-law (Supreme Court *en banc* judgment of 21 June 2019, 5-18-5/17; Supreme Court Constitutional Review Chamber judgment of 28 September 2021, 5-21-4/13). Since the amendment entering into force on 1 January 2024 did not establish any exceptions, § 7(2) of the AGIPA, together with other provisions of the AGIPA, cannot be interpreted so that a partner with whom the applicant is not married or in a registered partnership on the grounds that such legalisation of the relationship was not legally possible in their country of origin could be considered the applicant's family member.

42. Based on the foregoing, § 7(2) of the AGIPA is a relevant provision and the application by the Circuit Court of Appeal is admissible. Next, it is necessary to assess which fundamental rights have been interfered with and whether interference complies with the Constitution.

(II)

43. The absence of a legal basis on the basis of which a residence permit could be issued to a refugee's *de facto* permanent partner, with whom it was legally impossible for them to marry or register their partnership in the country of origin (§ 7(2) clauses 1 and 1¹, (5) and § 46 in conjunction with § 46 of the AGIPA), interferes with the fundamental right to family of a refugee seeking reunification (§ 26(1) (first sentence) and § 27(1) Constitution).

44. The fundamental right to family protects the right of family members to maintain family ties in the broadest sense, including the right to live together. According to the established case-law of the ECtHR, a permanent factual relationship is also considered to be family life protected by Article 8 of the ECHR. The ECtHR has found that just like the relationship between people of different sexes in the same situation, a relationship between people of the same sex with a permanent factual partnership falls under the concept of "family life" (ECtHR judgment of 24 June 2010, *Schalk and Kopf v. Austria*, 30141/04, para. 94; ECtHR (GC) judgment of 7 November 2013, *Vallianatos and Others v. Greece*, 29381/09 and Others, para. 73; ECtHR (GC) judgment of 17 January 2023, *Fedotova and Others v. Russia*, 40792/10 and Others, paras 146–148). Thus, just like people of different sexes, people living in a permanent partnership of the same sex can form a family within the meaning of the fundamental right to family, and the Constitution protects their family life from interference by the state power (Supreme Court *en banc* judgment of 21 June 2019, 5-18-5/17, paras 47–48, 52; Supreme Court Constitutional Review Chamber judgment of 28 September 2021, 5-21-4/13, para. 38). As as of 1 January 2016, gender-neutral registered partnerships have been allowed in Estonia (§ 1(1) Registered Partnership Act), and gender-neutral marriage has been allowed in Estonia since 1 January 2024 (§ 1(1) Family Law Act), so cohabitations of both the people of different sexes as well as of the same sex are considered a family in Estonia according to the law.

45. The fundamental right to family also applies to foreign citizens and stateless persons staying in Estonia (§ 9(1) Constitution) as well as their family members. A foreigner's right to reside in Estonia may arise from a residence permit issued on the basis of a law. A refugee is issued a residence permit for three years (§§ 37 and § 38(1) AGIPA). Without a residence permit, a refugee's partner who is a foreigner cannot settle in Estonia either, but a residence permit is issued only to a partner specified in § 7(2) clauses 1 and 1¹ of the AGIPA (§ 46 AGIPA). Thus, the fact that the applicant's *de facto* permanent partner is not considered a member of the applicant's family, despite it having been legally impossible for them to legalise partnership in their country of origin, prevents the family from living together in Estonia and interferes with their fundamental right to family (see, by analogy, the cited 5-21-4/13, paras 38–39). A separate review of restriction of the fundamental right to equality is not necessary in the present case, because it can be taken into account when assessing the fundamental right to family (e.g. Supreme Court *en banc* judgment of 13 November 2012, 3-1-1-45-12, para. 29; Supreme Court *en banc* judgment of 9 December 2013, 3-4-1-2-13, para. 114).

(III)

46. Just like other fundamental rights guaranteed under the Constitution, the fundamental right to family is not unlimited. Under § 11 of the Constitution, rights and freedoms may be restricted only in accordance with the Constitution. The restrictions must be necessary in a democratic society and may not distort the essence of the rights and freedoms restricted. That is, interference with a fundamental right must have a (legitimate) aim complying with the Constitution and the interference must be proportionate to attaining the aim (appropriate, necessary and proportional in the narrow sense). Interference with a fundamental right is a measure appropriate for attaining the aim if it helps in some way to attain the aim. However, interference is necessary only if the aim cannot be attained by using a measure which is less

restrictive of fundamental rights. In order to decide on the narrow proportionality of a measure, it is necessary to consider, on the one hand, the extent and intensity of interference with the fundamental right and, on the other hand, the importance of the aim (e.g. Supreme Court Constitutional Review Chamber judgment of 6 March 2002, 3-4-1-1-02, para. 15; Supreme Court *en banc* judgment of 21 January 2014, 3-4-1-17-13, para 32–35; cited 5-18-5/17, para. 65).

47. Under § 26 (second sentence) of the Constitution, interference with individuals' private or family life is allowed to protect public health, public morality, public order or the rights and freedoms of others, to prevent a criminal offence, or to apprehend an offender. Section 27(1) of the Constitution guarantees the protection of family life without a statutory reservation. However, this does not mean that this right cannot be restricted. According to the Supreme Court, if the conditions for restriction are not listed in a fundamental right provision, other fundamental rights or constitutional values can be considered as justifications for restricting that fundamental right (e.g. Supreme Court *en banc* judgment of 17 March 2003, 3-1-3-10-02, para. 28; 15 February 2023, 3-18-477/73, para. 63; 21 June 2019, 5-18-5/17, para. 66). However, restrictions may not harm an interest or right protected by law more than is justified by the legitimate aim of the norm (Supreme Court Constitutional Review Chamber judgment of 26 May 2015, 3-4-1-59-14, para. 18). According to Article 8(2) of the ECHR, interference with family life is allowed, *inter alia*, in the interests of national security, public safety, for the prevention of disorder or crime, or for the protection of the rights and freedoms of others. According to the strict interpretation by the ECtHR, interference must correspond to a pressing social need and be proportionate to the legitimate aim pursued, regard being had to the fair balance between the relevant competing interests (ECtHR (GC) judgment of 10 September 2019, *Strand Lobben and Others v. Norway*, 37283/13, para. 203).

48. In the present case, the aims of immigration control are the need to avoid a threat to national security and public order, which are permissible aims under both the Constitution and the ECHR. In assessing the constitutionality of the Aliens Act, the Supreme Court *en banc* agreed that interference with the fundamental right to family is justified by the obligation of the state to ensure the protection of internal peace and the preservation of the Estonian nation arising from the preamble of the Constitution. These aims can be achieved by the state if it has the right to decide whether and under what conditions to admit foreigners to the country (cited 5-18-5/17, para. 67 and the case-law cited therein; cited 5-21-4/13, paras 44–45).

49. The Chamber is of the opinion that the contested regulatory provisions of the AGIPA have the same purpose as the provisions of the Aliens Act at issue in cases 5-18-5/17 and 5-21-4/13. With § 7(2) of the AGIPA, the state also carries out immigration control, i.e. supervision over whom, whether and under what conditions, is allowed to enter the country, and thus ensures the protection of internal peace and the preservation of the Estonian nation.

50. The current measure is appropriate for achieving this aim, but it is not necessary, as the aim can be achieved by means that are less intrusive of fundamental rights. The current regulation under the AGIPA allows to control the arrival of a refugee's partner in Estonia and their stay in Estonia and prescribes the grounds on which the state denies a residence permit to a family member for reunification (§ 46(8) clauses 1–3 of the AGIPA with reference to § 22(1) and (3) of the AGIPA; see also Article 6(1) of Directive 2003/86). On the same grounds, it is possible to refuse to extend a residence permit and revoke it. In the case deliberated on the basis of the Aliens Act, the Supreme Court *en banc* considered it important that in order to ensure internal peace and preservation of the nation, it is possible to prescribe rules in law that enable to assess

the specific threat arising from a specific applicant for a residence permit and to refuse to issue a residence permit to a person in the case of whom a relevant threat appears (5-18-5/17, para. 70; see also 5-21-4/13, para. 45). In this case, these rules already exist in the current law. The AGIPA makes it possible to prevent a person who is potentially dangerous to the Estonian state from being allowed to enter the country as a partner of a refugee.

51. The Riigikogu and the Minister of the Interior have additionally noted that the requirement of marriage and registered partnership helps to prevent abuse of the right to family reunification and administrative proceedings are more efficient if family life is based on evidence and not on the claims by persons. Firstly, the Chamber is of the opinion that, in the present case, the efficiency of administrative proceedings is not a separate aim, but concerns the procedural side of immigration control. Secondly, although the simplicity of administration is demonstrated by how easy it is for an administrative authority to obtain, verify and otherwise process the relevant data (Supreme Court Constitutional Review Chamber judgment of 27 December 2011, 3-4-1-23-11, para. 60), the fact that case-by-case review is not as efficient as a general prohibitive condition does not render the contested regulation necessary within the meaning of § 11 of the Constitution. Under the current law, the dangerousness of each applicant for a residence permit is assessed on a case-by-case basis, and if a particular person is dangerous, a residence permit should not be issued to them (§ 46(8) clauses 1–3 of the AGIPA). It is also always necessary to check whether the marriage and registered partnership are genuine, as § 7(5) of the AGIPA requires that the family must have already existed in the country of origin. Mere proof that the persons have entered into marriage or registered their partnership does not preclude the marriage or partnership from being fictitious (cf. also § 138 of the Aliens Act). Thus, the executive authorities must also assess the possible technical and intellectual falsification of the marriage or registered partnership certificate submitted to them and cannot make decisions on the basis of the document alone.

52. In a situation where the State has to additionally verify the genuineness of the family life of persons who have not been able to marry or enter into a registered partnership in their country of origin due to the legal impossibility of marriage, the administrative burden is mitigated by the fact that the burden of proving a stable relationship lies with the applicant (para. 38 above; see Article 4(3), Article 5(2) and Article 11(2) of Directive 2003/86 in combination). Since an applicant for international protection must submit information about family ties, including a partner, when applying for international protection (§ 14(7) AGIPA), it should be clear to them already at this stage that the status of a family member must be proven. A time limit has also been set for family reunification under the AGIPA (§ 46(5) AGIPA). In the case of possibility of family reunification in another country, additional conditions are laid down for applying for a residence permit (§ 46(6) AGIPA).

53. Even if, compared to the verification of the actual existence of marriage and registered partnership, it is somewhat more difficult to ascertain the establishment of a *de facto* family in a foreign country, the statistics provided by the Minister of Justice and Digital Affairs (para. 28 above) indicate that only few persons have been granted a residence permit as a family member on the basis of the AGIPA. The present case concerns only persons who have been legally unable to marry or enter into a registered partnership in their country of origin. The number of applicants for a residence permit under the AGIPA should not increase excessively as a result of such individuals. Thus, a complete prohibition without exceptions to treat a refugee's *de facto* cohabiting partner as a family member is not necessary, because the aim of ensuring control over immigration and the protection of internal peace and the preservation of the Estonian nation can be achieved in a way that is less restrictive of fundamental rights.

54. Within the constitutional review initiated by the court, the Supreme Court examines the constitutionality of the provision in question primarily on the basis of the circumstances of the specific case, i.e. by considering whether in the case of a specific applicant their disputed fundamental right has been proportionately restricted (see e.g. Supreme Court *en banc* judgment of 11 June 2019, 5-18-8/19, para. 57; Supreme Court Constitutional Review Chamber judgment of 16 November 2021, 5-21-10/18, para. 67). The Chamber does not find that the requirement under the AGIPA to enter into marriage or register a partnership would generally be disproportionate, but it is not compatible with the Constitution in a situation where it is legally impossible for a refugee and their partner to comply with the requirements of the AGIPA. Although no obligation exists under EU law to recognise a cohabiting partner as a family member, recital 8 in the preamble to Directive 2003/86 supports the imposition of conditions for family reunification for refugees which are more favourable than those for other foreign nationals, on account of the reasons which obliged them to flee their country and prevented them from leading a normal family life there. The extension of the possibilities for family reunification is also supported by recital 2 of Directive 2003/86, which refers to international law and Article 8 of the ECHR. The ECtHR has found that there exists a consensus at international and European level on the need for refugees to benefit from a family reunification procedure that is more favourable than that foreseen for other aliens (ECtHR judgment of 4 July 2023, *B. F. and Others v. Switzerland*, 13258/18 and *Others*, 2023, para. 90, with reference to ECtHR (GC) judgment of 9 July 2021, *M. A. v. Denmark*, 6697/18, para. 138, 153). Considering that, on the one hand, intensive interference with a refugee's fundamental right to family is at stake and, on the other hand, a risk to public order and security managed on the basis of other provisions, the disputed regulation under the AGIPA would not be proportional in the narrower sense either. The regulation under the AGIPA would not be made proportionate even if the applicant's partner would be able to apply for a visa to come to Estonia, and the persons would then marry or register their partnership in Estonia, and the partner could apply for a residence permit on the basis of the Aliens Act (cf. Supreme Court Constitutional Review Chamber judgment of 22 June 2023, 5-23-6/13, para. 59). In the present case, such a solution might not be possible, as the applicant's partner is a citizen of the RF who could apply for an Estonian visa only for humanitarian reasons (see also Government of the Republic Regulation No 42 of 8 April 2022 on the "Imposition of sanctions of Government of Republic in connection with aggression of the Russian Federation and the Republic of Belarus in Ukraine", Government of the Republic Order No 247 of 8 September 2022 on "Temporary restriction on crossing of the state border by citizens of the Russian Federation").

55. On the basis of the foregoing, the Chamber is of the opinion that § 7(2) of the AGIPA in conjunction with §§ 7(5) and § 46 of the AGIPA disproportionately restrict the fundamental right to family (§§ 26, 27(1) and § 11 of the Constitution). On the basis of § 15(1) clause 2 Constitutional Review Court Procedure Act, § 7(2) of the AGIPA must be declared unconstitutional and invalid to the extent that it fails to consider a refugee's *de facto* cohabiting partner who lived with the refugee before the refugee's arrival in Estonia to be the refugee's family member with whom marriage or registration of a registered partnership was legally impossible in the refugee's country of origin regardless of the will of the partners.

(signed digitally)