



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	5-26-30
Date of judgment	1 September 2026
Judicial panel	Chair Villu Kõve, members Saale Laos and Nele Siitam
Case	The review of lawfulness of the National Electoral Committee resolution No 100 of 25 August 2026
Participants in the proceedings	Arvo Aller, Rain Epler, Helle-Moonika Helme, Mart Helme, Martin Helme, Rene Kokk, Siim Pohlak, Anti Poolamets and Evelin Poolamets National Electoral Committee
Manner of examination	Written procedure

THE SUPREME COURT DECIDES AS FOLLOWS:

To deny the complaint.

FACTS AND COURSE OF PROCEEDINGS

1. On 24 August 2026, 75 members of the Riigikogu nominated the sitting Chancellor of Justice Ülle Madise as a candidate for President of the Republic in the first round of voting in the Riigikogu, scheduled to take place on 2 September 2026. On the same day, nine members of the parliamentary group of the Estonian Conservative People's Party (EKRE) in the XV composition of the Riigikogu applied to the National Electoral Committee (NEC), requesting that Ü. Madise not be registered as a candidate for President of the Republic. In their view, her candidacy would be contrary to the principle of separation and balance of powers and the requirement of independence of the Chancellor of Justice arising from §§ 4 and 139 of the Constitution.

2. By resolution No 100 of 25 August 2026, the NEC registered Ü. Madise as a candidate for President of the Republic.

3. On **27 August 2026**, the aforementioned nine members of the **EKRE parliamentary group** in the Riigikogu (the applicants) challenged the NEC resolution of 25 August 2026. In their submission to the NEC, they sought annulment of NEC resolution. They also requested that the election of the President of the Republic be postponed until the complaint had been resolved (§ 43 of the Constitutional Review Procedure Act (CRPA)).

4. The applicants requested that their submission be treated as a protest to the NEC concerning violation of the voting procedure within the meaning of § 10(1) of the President of the Republic Election Act (PREA). Alternatively, if the NEC considers that it cannot be examined as a protest, the submission must be treated as a complaint against the NEC resolution and referred to the Supreme Court (§ 37(2) and § 38 CRPA).

5. The task of the NEC is to ensure that the organisation of elections, including the registration of candidates, takes place in accordance with the law in force. Since the decision to register a candidate is made by the NEC, members of the Riigikogu, including the applicants, must have the opportunity to challenge, inter alia, such NEC decisions which are unlawful in themselves, as well as those which would subsequently render the voting in the election of the President of the Republic and the determination of the voting results unlawful.

6. The applicants have an individual right to participate and vote in the election of the President of the Republic arising from § 79 of the Constitution. The registration of an unconstitutional candidate renders the entire process of electing the President of the Republic unconstitutional, as a result of which members of the Riigikogu, including the applicants, are unable to exercise the fundamental right laid down by § 79 of the Constitution. According to Supreme Court case-law, it must be possible to challenge the very first electoral step that caused a violation of a person's rights (Supreme Court Constitutional Review Chamber order of 20 October 2025, 5-25-34/9, para. 8).

7. The candidacy of the sitting Chancellor of Justice for President of the Republic without resigning from office is contrary to the Constitution, as it creates an irreconcilable institutional conflict of interest with the independence and supervisory function of the Chancellor of Justice arising from § 139 of the Constitution.

8. Holders of independent public offices (the Auditor General, the Chancellor of Justice, judges) are obliged to remain independent throughout their term of office. These offices differ from all others in that their holders are not subordinate to anyone when resolving substantive matters and must act impartially, guided solely by their conscience. The duty to remain independent also encompasses the appearance of independence. The office of the President of the Republic, however, is political (§ 78, clauses 1, 6, 9, 10 and 16 of the Constitution). Furthermore, unlike the Chancellor of Justice, the President of the Republic is an elected (rather than appointed) political constitutional body whose assumption of office depends on the support of political representative assemblies.

9. The office of the Chancellor of Justice and candidacy for President of the Republic are institutionally incompatible. Under § 139(1) of the Constitution and § 1(1) of the Chancellor of Justice Act, the main task of the Chancellor of Justice is to exercise supervision over the conformity of legislation of general application passed by the legislative and executive branches of government and by local authorities with the Constitution and laws. If the sitting Chancellor of Justice becomes a candidate for President of the Republic, they seek a decision from an institution subject to their supervision in which they have a direct personal interest, but which that institution is under no obligation to make. This transforms the constitutional supervisory relationship between the Chancellor of Justice and the Riigikogu from a unilateral relationship of oversight into a relationship of mutual dependence. The Chancellor of Justice thereby finds themselves in a conflict of interests and roles. This is neither short-term nor insignificant. In addition, it must be taken into account that if the Chancellor of Justice standing as a candidate is not elected, they will continue to hold their current office. In that case, the Riigikogu and the public can no longer regard the Chancellor of Justice as a neutral expert, but rather as an unsuccessful presidential candidate whose subsequent actions may be motivated by the outcome of the vote. International law also supports the position that the Chancellor

of Justice is prohibited from standing as a candidate for President of the Republic (see paras 1 and 9 of the Council of Europe's Venice Commission's 2019 Principles on the Protection and Promotion of the Ombudsman Institution).

10. Similarly, a judge may neither stand as a candidate for nor serve as a member of the Riigikogu or a rural municipal or city council, even if they do not belong to a political party (see § 49(2) of the Courts Act and Opinion No 3/25 of 2025 issued by the Judicial Ethics Council based on the Bangalore principles (*The Bangalore Principles of Judicial Conduct*).

11. Section 79(3) of the Constitution and § 2 of the PREA establish requirements and restrictions for presidential candidates: a candidate must be an Estonian citizen by birth, at least 40 years of age, and may not be in active service in the Defence Forces or have already served two terms as President of the Republic. However, this list is not exhaustive. The Constitution must be interpreted systematically, not merely grammatically. Consequently, a restriction on candidacy may arise from the combined effect of legal norms, the nature of an institution, or the general principles of the Constitution. Since § 84 of the Constitution does not resolve the conflict concerning independence during the period of candidacy for President of the Republic, the principle of separation and balance of powers and § 139 of the Constitution, which requires adherence to the principle of independence, must be applied as special provisions. Based on these principles, it can be concluded that the Chancellor of Justice, as the holder of an independent office, cannot stand as a candidate without resigning from office.

12. As an additional consideration, it must be taken into account that, under § 9 of the Chancellor of Justice Act, the Chancellor of Justice must give the President of the Republic at least four months' notice of their resignation from office, and § 8 of the Chancellor of Justice Act does not list election as President of the Republic as a ground for the termination of the Chancellor of Justice's term of office.

13. In its **cover letter of 27 August 2026**, by which the submission was forwarded, the **NEC** takes the view that, since the vote had not yet taken place at the time the submission was made, the decision to register a candidate cannot constitute a violation of the voting procedure within the meaning of § 10(1) of the PREA. The registration of candidates and voting are separate stages of the electoral procedure regulated by the PREA. The fact that the registration of a candidate is a prerequisite for voting and subsequently affects the list of candidates included on the ballot paper does not render the decision to register a candidate part of the voting procedure. Therefore, the NEC did not treat the submission as a protest laid down by the PREA and forwarded it to the Supreme Court by letter.

14. The NEC notes that, in its previous case-law concerning municipal council elections, the Supreme Court has held that, although a resident of a rural municipality may have an interest in ensuring that individuals are elected to the council and replaced by substitute members in accordance with the procedure laid down by law, such an interest alone does not confer on individuals any judicially enforceable subjective rights, and such a complaint must be regarded as a complaint lodged in the public interest (see Supreme Court Constitutional Review Chamber judgment of 12 March 2013, 3-4-1-6-13, para. 20; 19 December 2025, 5-25-75/3). The question of whether members of the Riigikogu have the right to lodge a complaint under § 37 of the CRPA in the case of election of the President of the Republic falls within the jurisdiction of the Supreme Court.

15. The NEC objects to the complaint on its merits and asks it to be denied. The NEC discussed the matter at its meeting held on 25 August 2026 (see the minutes). When registering the candidate, the NEC verified compliance with the statutory restrictions on candidacy for the office of the President of the Republic. The current law does not lay down a prohibition on the Chancellor of Justice standing

as a candidate referred to by the applicants. In an analogous situation, the Federal Constitutional Court of Germany held on 27 January 1994 that Roman Herzog, a justice and President of the Federal Constitutional Court, could continue to serve as President of the Federal Constitutional Court while standing as a candidate for President of the Federal Republic (BVerfG 89, 359; 1 BvR 1693/92).

16. On 29 August 2026, one of the applicants, Martin Helme, filed a supplement to the complaint to the Supreme Court, setting out additional legal arguments.

OPINION OF THE CHAMBER

17. The Chamber agrees with the NEC that the applicants did not have standing to lodge a protest within the meaning of § 10 of the PREA.

18. The first round of the election of the President of the Republic is scheduled to take place in the Riigikogu on 2 September 2026. The President of the Republic Election Act distinguishes between the nomination and registration of a candidate (Chapter 4, § 15), the organisation of voting (Chapter 2, §§ 6–10), and ascertaining the voting results and election results (Chapter 3, §§ 11–13). These are distinct and logically successive stages of the election of the President of the Republic. The possibility of lodging a protest is stipulated only in respect of violations of the voting procedure under § 10 of the PREA and of the procedure for ascertaining voting results under § 12 of the PREA. Neither the organisation of voting nor, even less so, ascertaining the results encompasses the stage of nominating and registering a candidate. This is also confirmed by § 10(2) of the PREA, according to which the NEC examines a protest only after the vote is closed. From the perspective of procedural economy and legal certainty, it would not be justified to conduct voting first and only thereafter allow the eligibility of a candidate to be called into question.

19. Section 15(10) of the PREA provides for the possibility of making changes to the list of candidates after the registration only in the event of a candidate's death or if a document is submitted proving that a candidate does not meet the requirements set out in § 2 of the PREA. This provision obliges the NEC to examine *ex officio* any new documents submitted to it but does not confer standing to challenge any action or inaction on the part of the NEC. Thus, the PREA does not regulate the possibility of challenging the registration of a candidate.

20. As their first alternative, the applicants requested that their submission be treated as a protest. Therefore, the NEC should have declined to examine the protest by a collegial decision taken at a public meeting (see Supreme Court Constitutional Review Chamber judgment of 11 September 2025, 5-25-27/8, paras 16–17). The Chamber finds that, in the present case, the NEC's letter of 27 August 2026, by which the NEC referred the complaint to the Supreme Court, can nevertheless be regarded as a decision of the NEC to decline to examine the protest. This is because the NEC had already adopted a substantive position on the applicants' application at its public meeting held on 25 August 2026, to which reference is also made in the cover letter accompanying the NEC's referral of the complaint to the Supreme Court (see para. 15 above). The minutes of meeting No 55 show that, on 24 August, the applicants had already made a submission based on the same grounds as the present complaint, asking that Ü. Madise not be registered as a candidate. That submission was discussed at the NEC's public meeting on 25 August, where the NEC members unanimously concluded that no grounds existed for refusing to register Ü. Madise as a presidential candidate.

21. Taking into account both the urgency of the issue raised by the applicants and the fact that, as an alternative, the applicants themselves requested that the NEC refer their submission to the Supreme

Court should the NEC lack competence (§ 37(2) CRPA), the Chamber regards the letter of 27 August 2026 forwarded by the NEC Chair as a resolution of the NEC.

22. Under § 37(2) of the CRPA, a person who considers that their rights have been violated by a decision or action of the electoral committee relating to the election of the President of the Republic may apply to the Supreme Court requesting that the electoral committee decision be annulled or its action be declared unlawful. However, a complaint is admissible under § 37(2) of the CRPA only if the applicants' subjective rights may have been violated by the NEC resolution of 25 August 2026 to register Ü. Madise as a presidential candidate.

23. In response to the applicants' argument, the Chamber notes the following. Given the number of members of the Riigikogu, it would also have been possible to nominate a second candidate. Thus, even if a candidate who did not meet the requirements had been registered, it cannot be argued that the nomination of that candidate as a presidential candidate deprived the applicants of the opportunity to participate and vote in the constitutional election of the President of the Republic. The applicants also have the option of not voting for a candidate whom they do not favour.

24. Although the PREA does not lay down a legal basis for challenging an NEC decision registering presidential candidates, the applicants have standing to lodge a complaint under § 37(2) of the CRPA in the present case.

25. All activities of public authorities must be constitutional and based on laws (§ 3 Constitution). Only a person who meets the requirements of the Constitution and the law should be eligible for election as President. The procedure for nominating and registering a candidate should also comply with these requirements. It is therefore important to ensure that only persons who meet the requirements are registered as presidential candidates, that nomination and registration as procedural acts are carried out in accordance with the Constitution and the law, and that any fundamental doubts are dispelled and shortcomings remedied as quickly as possible, in particular before the first round of the election of the President of the Republic and voting on the candidates begin (see Supreme Court Constitutional Review Chamber judgment of 15 September 2021, 5-21-11/2, para. 17).

26. The primary right to elect the President of the Republic rests with the Riigikogu (§ 65 clause 3, and § 79(4) Constitution). All the applicants are members of the Riigikogu who are entitled to vote in the first round of voting to be held on 2 September 2026. In a situation where the PREA does not allow a candidate's registration to be challenged through protest proceedings, members of the Riigikogu, who subsequently have the right to lodge a protest under § 10(1) of the PREA concerning a violation of the voting procedure, must also have the right to challenge the NEC decision registering a candidate nominated for the first round of voting in the Riigikogu.

27. The Supreme Court has previously held that, in elections to municipal councils and the Riigikogu, a voter cannot, due to a lack of standing, challenge the fact that persons who were not entitled to do so participated in voting or stood as candidates (e.g. Supreme Court Constitutional Review Chamber judgment of 12 March 2013, 3-4-1-6-13, para. 20; 19 November 2013, 3-4-1-59-13, paras 27, 29–31; 19 December 2025, 5-25-75/3). Unlike elections to the Riigikogu and municipal councils, in which many candidates participate, the threshold for nominating candidates for President of the Republic is high. The right to nominate a candidate rests with at least one-fifth of the members of the Riigikogu (§ 79(2) Constitution), i.e. a candidate can be nominated only if supported by no fewer than 21 members of the Riigikogu. Moreover, a member of the Riigikogu may give their signature in support of only one candidate. Not every political party necessarily has enough members in the Riigikogu to nominate its own candidate. In the present case, too, only one candidate was nominated for the first

round of voting in the Riigikogu. If members of the Riigikogu were denied standing in such a situation, no one would be able to challenge the registration of a candidate for the office of President of the Republic, since there would be no other candidate whose subjective rights arising from their candidacy (e.g. the right to equal treatment) could have been violated. It would not be consistent with the spirit of the Constitution if no one were able to challenge such a fundamental issue as whether a candidate for President of the Republic meets the requirements of the Constitution and the law. Depending on the representation of political parties in the Riigikogu, this could give rise to a risk of arbitrariness and abuse.

28. However, the Chamber does not agree with the applicants that the contested NEC resolution is contrary to the Constitution.

29. Under § 79(3) of the Constitution, an Estonian citizen by birth who is at least forty years of age may be nominated as a candidate for President of the Republic. The Constitution does not impose any other restrictions or requirements on presidential candidates. Section 2(2) and (3) of the PREA additionally set out that a person who is serving a second consecutive term as President of the Republic or who is an active member of the Defence Forces may not be nominated as a candidate for President of the Republic. Furthermore, under § 84 of the Constitution, upon assuming office, the mandate and duties of the President of the Republic in all elected and appointed offices terminate, and they must suspend their membership in political parties for the duration of their term of office.

30. The applicants argue that the list set out in the Constitution and the President of the Republic Election Act is not exhaustive and that § 84 of the Constitution is merely a general provision. The applicants regard the principle of separation and balance of powers and the requirement of independence of the Chancellor of Justice contained in § 139(1) of the Constitution as special provisions in relation to § 84. Persons holding independent constitutional offices, such as the Chancellor of Justice, the Auditor General or judges (including Supreme Court justices), should not stand as candidates for President of the Republic before resigning from their office.

31. The Chamber does not agree with the applicants. No such requirement is laid down in the Constitution or in laws. Section 139(1) of the Constitution, which is a general provision concerning the independence of the Chancellor of Justice, is further specified by §§ 140, 141, 144 and 145 of the Constitution. The principle of independence of the Chancellor of Justice requires, above all, that the legislator, having regard to the Chancellor's constitutional independence, must not impose excessive restrictions on the Chancellor's activities or oblige them to perform duties that are incompatible with the constitutional functions of the Chancellor of Justice. Thus, the principle of independence is intended to safeguard the ability of the Chancellor of Justice to effectively perform the substantive duties assigned to them by the Constitution and the law.

32. To ensure independence, the legislator has also imposed restrictions on the activities of the Chancellor of Justice. However, the prohibition on participating in the activities of political parties contained in § 12(1) clause 2 of the Chancellor of Justice Act is not relevant, since a candidate for President of the Republic (or the President of the Republic, see § 84 of the Constitution) does not participate in the activities of a political party. If the legislator wishes to impose additional restrictions on candidacy for persons holding certain offices, including the Chancellor of Justice, such restrictions must be expressly laid down. This would constitute a fundamental restriction on the right to stand as a candidate for President of the Republic compared with all other persons holding elected or appointed offices, whose mandate terminates automatically upon assuming the office of President of the Republic (§ 84 Constitution).

33. The Bangalore Principles referred to by the applicants (para. 10 above) provide no basis for reaching a different conclusion either. Since the issue in the present case concerns the candidacy of the Chancellor of Justice for President of the Republic, the Chamber cannot assess whether and in what manner judges might stand as candidates for President of the Republic. The Chamber acknowledges that, under the Constitution, the activities of the President of the Republic are to some extent linked to policymaking (the right of veto in promulgating laws, appointments to office, representation in foreign affairs), but this is not comparable to the clearly political role of the Riigikogu or a municipal council. In Estonia, the President of the Republic has the function of uniting society, ensuring the stability of state authority and balancing constitutional institutions. This is affirmed by § 84 of the Constitution, under which the President of the Republic must suspend their political party membership for the duration of their term of office.

34. Paragraph 9 of the Venice Commission Principles referred to above (para. 9 above) likewise says nothing to suggest that the Chancellor of Justice may not stand as a candidate for President of the Republic. According to that paragraph, an ombudsman must not, during their term of office, engage in political, administrative or professional activities incompatible with their independence or impartiality. Although the President of the Republic has political duties upon assuming office (see the preceding paragraph), Ü. Madise would not be performing those duties while serving as Chancellor of Justice. Being a candidate for President of the Republic does not entail performing the duties of that office. The President of the Republic acquires their powers only after taking the oath of office before the Riigikogu (§ 81 Constitution). Section 81 of the Constitution, read in conjunction with § 84 of the Constitution, ensures that the Chancellor of Justice can never hold both offices simultaneously. It follows from the foregoing that the connection between the candidacy of the Chancellor of Justice as an independent officeholder and the performance of the duties of the President of the Republic is too remote.

35. The applicants argue that, unlike the Chancellor of Justice, the President of the Republic is an elected rather than an appointed body whose assumption of office depends on the support of political representative assemblies, and that the office therefore differs fundamentally from the offices of judge, Chancellor of Justice and Auditor General, whose independence is guaranteed by the Constitution. In fact, the Riigikogu also plays a decisive role in appointing Supreme Court justices, the Chancellor of Justice and the Auditor General, since it may also decline to appoint the candidates submitted to it (§ 65 clauses 7 and 8 of the Constitution).

36. However, the Chancellor of Justice must bear in mind that, during the period of standing as a candidate for President of the Republic, while still holding the office of Chancellor of Justice, they must refrain from expressing political views that could undermine the position of the Chancellor of Justice. The applicants have not pointed to any such indications in the present case. On the contrary, the applicants note that Ü. Madise herself has repeatedly emphasised that a prerequisite for her candidacy for President of the Republic is that she maintains her impartiality. The fact that Ü. Madise is not the candidate of any single political party is confirmed by her nomination by different parliamentary groups in the Riigikogu. Ü. Madise was nominated as a candidate for President of the Republic by members of the Reform Party, Estonia 200, the Social Democratic Party and Isamaa, as well as several members of the Riigikogu not belonging to any parliamentary group. Of the political parties, only the Estonian Centre Party and EKRE did not participate in her nomination as a candidate for President of the Republic. In assessing the appearance of independence of the office of Chancellor of Justice, account must also be taken of the short duration of the candidacy period. Ü. Madise gave her official consent to being nominated as a candidate on 17 August 2026. The first round of voting in the Riigikogu will take place as early as 2 September 2026. If the sitting Chancellor of Justice were to act during the candidacy period in a manner incompatible with the independence of the Chancellor

of Justice, this would primarily be a question of their suitability to hold the office of Chancellor of Justice, rather than an obstacle to standing as a candidate for President of the Republic. In the present case, the Chamber is not aware of Ü. Madise having expressed any views incompatible with the independence of the Chancellor of Justice.

37. Nor can § 9 of the Chancellor of Justice Act, under which the Chancellor of Justice must give the President of the Republic at least four months' notice of their resignation from office, constitute a legal obstacle to standing as a candidate for President of the Republic. Although § 8 of the Chancellor of Justice Act does not list election as President of the Republic as a ground for termination of the Chancellor of Justice's term of office, under § 84 of the Constitution, upon assuming the office of President of the Republic, the President's mandate and duties in all elected and appointed offices terminate. Section 37(2) of the Chancellor of Justice Act sets out the procedure for replacing the Chancellor of Justice, which applies by analogy also where the sitting Chancellor of Justice's mandate ends as a result of being elected President of the Republic.

38. In conclusion, the Chamber takes the view that neither the Constitution nor specific laws stipulate that the Chancellor of Justice must resign from their current office if they stand as a candidate for the office of President of the Republic. No such obligation arises from the general principles of the Constitution or the principle of independence of the Chancellor of Justice referred to in § 139(1) of the Constitution. However, the Chancellor of Justice should maintain independence in their actions and statements during the candidacy period, which, on the basis of the information available to the Supreme Court, Ü. Madise has also done. In view of the foregoing, the Chamber denies the complaint (§ 46(1) clause 2 CRPA).

(signed digitally)