



S U P R E M E C O U R T

C O N S T I T U T I O N A L R E V I E W C H A M B E R

J U D G M E N T

in the name of the Republic of Estonia

Case number	5-25-13
Date of judgment	4 July 2025
Judicial panel	Chair Vahur-Peeter Liin; members Juhan Sarv and Nele Siitam
Case	Complaint by Märt Põder against the National Electoral Committee resolution No 35 of 20 June 2025
Participants in the proceedings	Märt Põder National Electoral Committee
Manner of examination	Written procedure

The Supreme Court decides as follows:

To deny the complaint.

F A C T S A N D C O U R S E O F P R O C E E D I N G S

Resolution of the National Electoral Committee

1. On 16 June 2025, Märt Põder filed a complaint with the National Electoral Committee (NEC), requesting that the NEC should require the State Electoral Office to correct the false statement published on 12 June 2025 on the website valimised.ee regarding the audit carried out during the 2023 Riigikogu elections.

2. On 20 June 2025, the NEC declined to examine the complaint by resolution No 35. Although under § 13(1) clause 1 of the Riigikogu Election Act (REA) the State Electoral Office is one of the organisers of Riigikogu elections, publishing a comment on the website is not an act arising from the election law, and consequently the NEC is not competent to examine M. Põder's complaint. Under § 9(2) clause 1 of the REA, the NEC may issue a precept to the State Electoral Office only to protect the principles set out in § 1 of the REA or to ensure an individual's subjective rights.

Complaint

3. On 26 June 2025, M. Põder filed a complaint with the Supreme Court, seeking a declaration of unlawfulness of the NEC resolution and the NEC to be required to examine the complaint on its merits. The applicant also seeks an assessment of whether the situation where no effective and fair

procedure exists for dealing with violations of the Public Information Act within the purview of the State Electoral Office and the NEC is constitutional.

4. In the applicant's opinion, the comment by the State Electoral Office published on the website valimised.ee on 12 June 2025 regarding the checks carried out during the audit of the 2023 elections is not true. In the applicant's opinion, as an election observer he has the right to receive correct information about the elections from the State Electoral Office as the election manager. The NEC supervises the performance of duties by the State Electoral Office. Thus, the NEC is competent to oblige the State Electoral Office to correct misleading information published in official channels. The NEC's position that the publication of a comment on the website is not an act arising from the election law is irrelevant, since under § 9(1) of the REA the NEC supervises the activities of an election manager more broadly. Thus, the duties arising from the statutes of the State Electoral Office and other official documents performed by an election manager must be regarded as an act.

Reply to the complaint

5. The NEC maintains its observations set out in resolution No 35 and requests that the complaint should be denied.

OPINION OF THE CHAMBER

6. The Chamber agrees with the NEC resolution to decline to examine M. Põder's complaint, but not with the reasoning of the NEC. The NEC's position that it lacked the competence in the present case to issue a precept to the State Electoral Office regarding the publication of information on the website valimised.ee is erroneous.

7. The State Electoral Office is a structural unit within the Riigikogu Chancellery (§ 14(1) of the REA). Pursuant to clause 5 of the "Statutes of the State Electoral Office", approved by Directive No 47 of 22 December 2016 of the Director of the Riigikogu Chancellery and amended by Directive No 22 of 24 May 2022, the website of the State Electoral Office is valimised.ee. Under clause 7.19 of the statutes, the Director of the Riigikogu Chancellery has delegated the development and administration of the website to the State Electoral Office. The Supreme Court has also previously explained that the website valimised.ee is the official election website of the Republic of Estonia, which is maintained by the State Electoral Office (Supreme Court Constitutional Review Chamber judgment of 28 October 2021, 5-21-16/3, para. 35). Although the State Electoral Office is a structural unit of the Riigikogu Chancellery, the activities of the State Electoral Office as an election organiser (§ 13(1) clause 1 REA) are supervised by the NEC (§ 14(1) and (5) REA).

8. Under § 48²(4) clause 4 of the REA, the State Electoral Office organises, inter alia, audits of the electronic voting system. The purpose of auditing the electronic voting system is, on the one hand, to be convinced of the system's functionality, integrity and compliance with the requirements and, on the other hand, to ensure public trust in the system. In terms of credibility of elections, it is important that voters have access to up-to-date and correct information about the functioning and security of the voting systems. The Supreme Court has also previously pointed out that in order to increase the transparency and credibility of the electronic voting system, it is important to disclose the audits and analyses carried out in respect of the electronic voting system (except to the extent that they have been declared information with restricted access) (Supreme Court Constitutional Review Chamber judgment of 21 October 2021, 5-21-15/3, para. 33).

9. In the present case, the applicant alleges that the information contained in the comment by the State Electoral Office published on the website valimised.ee is incorrect. Such a comment cannot be regarded as information whose publication is mandatory for the State Electoral Office under the election law. However, this does not detract from the fact that in a situation where the public may have doubts about the credibility of the auditing of the electronic voting system, it is justified to voluntarily provide additional explanations through an official information channel. Such voluntary disclosure of information may also be subject to supervision by the NEC if it relates to the protection of the principles set out in § 1 of the REA (§ 9(2) clause 1 REA).

10. As mentioned above, auditing the electronic voting system is important for ensuring the credibility of elections. The provision of explanations in order to dispel any doubts about the credibility of electoral systems serves the purpose of ensuring compliance with electoral principles. The publication of the comment at issue on the website valimised.ee also serves that purpose. Consequently, issuing a precept to the State Electoral Office to amend or remove that comment, if necessary for protecting the principles set out in § 1 of the REA, falls within the competence of the NEC in accordance with the first alternative under § 9(2) clause 1 of the REA. The Chamber adds that the NEC supervises the publication of election related information, not all information, on the website valimised.ee.

11. In the applicant's opinion, the publication of allegedly incorrect information on the website valimised.ee interferes with his rights as an observer. Public information regarding the elections and its accuracy are essential for the exercise of an observer's rights. At the same time, the fact that the State Electoral Office voluntarily published additional explanations on the official election website does not, in this case, give the applicant the right to demand that the NEC initiate supervision proceedings in respect of the State Electoral Office. In electoral matters, a person may protect their own subjective rights. Neither the Constitution nor the election law gives rise to the right to file a complaint in the public interest (Supreme Court Constitutional Review Chamber judgment of 18 June 2019, 5-19-33/2, para. 9). Supervision proceedings in election matters take place only in the public interest (Supreme Court Constitutional Review Chamber judgment of 4 January 2016, 3-4-1-33-15, para. 26), i.e. a person has the right only to have their own petition dealt with in accordance with the proper procedure, but not the right to demand the initiation of supervision proceedings or the implementation of a specific measure. Thus, although the NEC was competent to supervise the State Electoral Office in respect of the issue in dispute, the applicant does not have the right to request the initiation of supervision proceedings. Consequently, the NEC resolution to decline to examine M. Põder's complaint is ultimately lawful.

12. For the above reasons, the Chamber denies the complaint on the basis of § 46(1) clause 2 of the Constitutional Review Court Procedure Act.

(signed digitally)