



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	5-25-14
Date of judgment	10 October 2025
Judicial panel	Chair Villu Kõve, members Oliver Kask, Saale Laos, Vahur-Peeter Liin and Heili Sepp
Case	Review of the constitutionality of the Act Amending the Constitution of the Republic of Estonia and § 5(2) of the Municipal Council Election Act
Basis for proceedings	Application of 1 July 2025 by Kohtla-Järve City Council
Participants in the proceedings	Riigikogu Kohtla-Järve City Council Chancellor of Justice Minister of Justice and Digital Affairs Government of the Republic, representative Minister of Justice and Digital Affairs Association of Estonian Cities and Municipalities
Manner of examination	Written procedure

THE SUPREME COURT DECIDES AS FOLLOWS:

To deny the application by Kohtla-Järve City Council.

APPLICATION BY KOHTLA-JÄRVE CITY COUNCIL

1. On 1 July 2025, Kohtla-Järve City Council filed an application with the Supreme Court requesting that the Act Amending the Constitution of the Republic of Estonia (the Constitution Amendment Act, RT I, 11.04.2025, 1) be declared unconstitutional to the extent that it deprives third-country nationals and stateless persons of the right to vote in municipal council elections. Alternatively, Kohtla-Järve City Council requests that the Constitution Amendment Act be declared unconstitutional due to its overly hasty entry into force. Secondly, Kohtla-Järve City Council seeks a declaration of unconstitutionality of § 5(2) of the Municipal Council Election Act (MCEA), which entered into force on 9 July 2025.

2. The Constitution Amendment Act unconstitutionally interferes with the constitutional guarantees of local authorities, primarily with the right of self-organisation arising from § 154 of the Constitution

of the Republic of Estonia. As a result of depriving third-country nationals and stateless persons of the right to vote, municipal councils are distorted, especially in a situation where nearly half of the permanent residents are left without the right to vote (in Kohtla-Järve, third-country nationals account for 28.78%; together with stateless persons for 48.32% in total). This essentially amounts to nullification of local government autonomy and democratic legitimacy.

3. Depriving permanent residents – who have thus far been able to participate in the electoral process and who have legitimate and long-standing links to the local community – of their right to vote is not consistent with the principle of proportionality. Such a restriction is not justified, unavoidably necessary for achieving the objective pursued, or balanced against the resulting adverse effects. The legislator has not presented a reliable impact analysis or assessed the social, political or constitutional consequences of the amendments.

4. The process of enacting these amendments violated the principles that essential electoral provisions may not be amended less than a year before the elections. Furthermore, the amendments were not preceded by a public debate, nor were the target groups involved. The amendments enacted expeditiously violate the principles of stability and inclusiveness of electoral laws approved by the OSCE/ODIHR and the Venice Commission.

5. The restriction of the right to vote also negatively affects Estonian citizens, whose lawful representatives are deprived of the right to vote. This reduces, among other things, the actual opportunity for Estonian citizens to shape local government representative bodies, which indirectly affects the representation of their rights and interests. At the same time, the amendments significantly undermine trust in public authority and break the bond between local authorities and the population. The fundamentals of democratic local government are trust, inclusion, and representation. Without them, local government is just a formality.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

[...]

PROVISIONS CONTESTED

22. Sections 1 and 2 of the Act Amending the Constitution of the Republic of Estonia:

„§ 1. Amendment of the Constitution of the Republic of Estonia

The following amendments shall be made to the Constitution of the Republic of Estonia:

1) Section 156(2) is amended and worded as follows: "In elections of municipal councils, Estonian citizens and stateless persons who reside permanently in the territory of the municipality and have attained sixteen years of age have the right to vote, under conditions prescribed by a law.";

2) Section 156 subsection 2 is amended and worded as follows: "In elections of municipal councils, Estonian citizens who reside permanently in the territory of the municipality and have attained sixteen years of age have the right to vote, under conditions prescribed by a law.";

§ 2. Entry into force of the Act

(1) Section 1 clause 1 of this Act shall enter into force three months after the promulgation of this Act.

(2) Section 1 subsection 2 of this Act shall enter into force on 1 March 2026.”

23. Section 5(2) of the Municipal Council Election Act:

„§ 5. Right to vote and stand as candidate

[...]

(2) Stateless persons have the right to vote if they meet the conditions specified in subsection 1 of this section and they reside in Estonia on the basis of a long-term residence permit or the permanent right of residence.“

OPINION OF THE CHAMBER

(I) Admissibility of the application

24. Kohtla-Järve City Council filed an application with the Supreme Court under the procedure laid down by § 7 of the Constitutional Review Court Procedure Act (CRCPA). An application submitted on the basis of § 7 of the CRCPA is admissible if two conditions are simultaneously met: 1) the application has been submitted by the municipal council by a majority of the votes of its members and 2) the application alleges that an act of general application or a provision thereof contravenes local authority constitutional guarantees (most recently, Supreme Court Constitutional Review Chamber judgment of 30 June 2025, 5-24-33/25, para. 43).

25. On 26 June 2025, Kohtla-Järve City Council adopted Resolution No 216 by a majority vote of its members, approving the text of the application submitted to the Supreme Court. The applicant alleges a violation of the right of self-organisation as a constitutional guarantee of local authorities arising from § 154 of the Constitution. The prerequisites for the admissibility of the application have been met in this case.

(II) Merits of the application

26. In the applicant’s opinion, its right to self-organisation is interfered with by the amendment of § 156(2) of the Constitution and § 5(2) of the MCEA since in the 2025 municipal council elections third-country nationals will no longer have the right to vote and, after 1 March 2026, stateless persons will also lose their active right to vote in local elections. Alternatively, Kohtla-Järve City Council seeks a declaration of unconstitutionality of the amendments that entered into force on 9 July 2025 on account of their overly hasty entry into force before the municipal council elections of 19 October 2025.

27. Section 7 of the CRCPA does not give rise to the right of a municipal council to submit an application for constitutional review to the Supreme Court for the protection of subjective rights of individuals (Supreme Court Constitutional Review Chamber judgment of 9 June 2009, 3-4-1-2-09, para. 36), but solely for the protection of its own constitutional guarantees. Thus, it must be assessed whether the contested provisions actually interfere with the right of self-organisation of local authorities.

28. Under § 154(1) of the Constitution, all local issues are decided and organised by local authorities, acting independently on the basis of laws. Local government autonomy is provided as a constitutional guarantee in order to protect the independence of local authorities in resolving local issues in the interests of the local community against arbitrary interference by the central government (Supreme Court *en banc* judgment of 19 April 2005, 3-4-1-1-05, para. 17).

29. At the heart of the present constitutional review case are the amendments to the Constitution adopted by the Riigikogu, i.e. the restriction by the Constitution of the active right to vote in municipal council elections.

30. Section 156(2) of the Constitution, which lays down the right to vote in municipal council elections, is part of the constitutional regulatory framework governing local authorities. As a constitutional norm, § 156 of the Constitution also affects the interpretation of the principle of local government autonomy (§ 154 Constitution). By following due procedure, the constitutional legislator may reshape the provisions of the Constitution governing local authorities. Thus, a constitutional amendment's conflict with the Constitution can primarily consist of a violation of the procedure for amending the Constitution.

31. The procedure for amending the Constitution is laid down by Chapter XV of the Constitution. A law amending the Constitution whose draft has not been duly processed, adopted or promulgated is unconstitutional. A law amending the Constitution adopted by the Riigikogu is also formally unconstitutional if the amendment results in a substantive change to one of the (fundamental) principles or norms laid down by Chapter I, "General Provisions", or Chapter XV, "Amendment of the Constitution", in the Constitution. These chapters of the Constitution can only be amended by a referendum (§ 162 Constitution). Section 156 of the Constitution is contained in Chapter XIV of the Constitution, and the adoption of a law amending this chapter is within the competence of the Riigikogu.

32. Under § 161 of the Constitution, at least one fifth of the members of the Riigikogu have the right to initiate an amendment to the Constitution. Under § 163(1) clause 3 of the Constitution, the Riigikogu may adopt a law amending the Constitution as a matter of urgency. A resolution to consider a draft law as urgent is passed by a four-fifths majority of the Riigikogu and, in that case, the law amending the Constitution is passed by a two-thirds majority of the members of the Riigikogu (§ 166 Constitution). A draft law amending the Constitution is deliberated in three readings in the Riigikogu, with at least three months' interval between the first and second reading and at least one month between the second and third reading (first sentence of § 163(2) of the Constitution). The method of amending the Constitution is decided at the third reading (second sentence of § 163(2) of the Constitution).

33. The Draft Constitution Amendment Act at issue (536 SE, XV Riigikogu composition) for restricting the right of non-citizens to vote in local elections was initiated by 61 members of the Riigikogu on 7 November 2024. The first reading of the Draft Act at a plenary sitting of the Riigikogu took place on 20 November 2024. The second reading took place on 25 February 2025, i.e. more than three months after the first reading. The third reading of the Draft Act in the Riigikogu took place on 26 March 2025, i.e. more than a month after the second reading. The Riigikogu Constitutional Committee proposed that the Draft Constitution Amendment Act be treated as a matter of urgency under § 163(1) clause 3 and § 166 of the Constitution. Ninety-two Riigikogu members voted in favour of it and seven voted against. Thus, the proposal received the required four-fifths majority. At the final vote, 93 Riigikogu members voted in favour of the Constitution Amendment Act, i.e. more than the required minimum of 68, and 7 Riigikogu members were against.

34. Under § 167 of the Constitution, a law amending the Constitution enters into force at the term specified in the law itself, but not earlier than three months after its promulgation. Section 2(1) of the Constitution Amendment Act sets out that the amendment concerning the right to vote of third-country nationals enters into force three months after the promulgation of the Act. The President of the Republic promulgated the Constitution Amendment Act on 8 April 2025 and it entered into force on 9 July 2025 in respect of the right of third-country nationals to vote. Formally, the shortest *vacatio legis* allowed by the Constitution has been followed.

35. The Constitution does not lay down an express prohibition on making significant changes to electoral rules immediately before an election. However, the Supreme Court has previously repeatedly explained that the minimum requirement for amending electoral rules is that the law proposing a significant change must be passed with the consideration that it could enter into force well before the elections (Supreme Court Constitutional Review Chamber judgment of 14 October 2005, 3-4-1-11-05, para. 23; 15 July 2002, 3-4-1-7-02, para. 27). The purpose of this requirement is to protect legal certainty and trust in democratic elections and to prevent undemocratic influence on election results. Changes made to the electoral rules immediately before an election that may significantly influence the election results in favour of one or another political force cannot be considered democratic (cited 3-4-1-7-02, para. 27).

36. According to section II.2.b of the Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe, available online: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)) the fundamental elements of electoral law should not be amended less than one year before an election, or the relevant amendments should be written in the constitution or at a level higher than ordinary law. Depending on the circumstances, an amendment to the right to vote made in the *Constitution* less than a year before the elections may be acceptable in a democratic society. The above point of the Code of Good Practice in Electoral Matters is interpreted in the Revised Interpretative Declaration on the Stability of Electoral Law approved in 2024, available online: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)027-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)027-e)).

Paragraph 2 of the declaration allows for subsequent amendments to the electoral rules only in order to comply with the decisions of constitutional courts, to follow the recommendations of international organisations, or based on consensus in the parliament between the ruling party (or parties) and the opposition, and with sufficient involvement of societal groups, provided that the amendment is consistent with the standards of democratic elections.

37. However, in the opinion of the Chamber, deviation from these international recommendations is not sufficient to deem the constitutional amendment at issue to be formally inadmissible. The Chamber agrees with the participants in the proceedings who argue that a distinction must be made between a situation where restrictions on the right to vote are established by an electoral law and a situation where amendments are laid down by the Constitution. The strict procedure prescribed for amending the Constitution presumes broad political support among the members of the Riigikogu for the proposed amendment. This helps to ensure that broad support exists in society for amending the constitutional regulation of the right to vote and that it is not done solely in the interests of a few political forces, in particular those in power at the time of the amendment. An open and broad societal debate helps mitigate the potential negative impact on public trust of the change made less than a year before an election. For example, the Riigikogu Constitutional Committee involved researchers from the University of Tartu and Tallinn University, the State Electoral Office, the Chancellor of Justice and the Government of the Republic in the discussion of the Draft Act. It is also important to note that the Draft Constitution Amendment Act received overwhelming support of the Riigikogu members when adopted, and the Act was passed nearly seven months before the next municipal council elections, not immediately before the elections.

38. Nor does the Constitution Amendment Act contravene the provisions of the Constitution which can be amended only by a referendum. Section 156 of the Constitution lays down a representative body exercising self-determination at the local level, as well as how and under what conditions that body is formed, thereby also defining the range of persons eligible to vote in local elections. Granting the right to vote only to citizens does not inherently contravene the principle of democracy (§ 1 of the Constitution). The right to vote is a fundamental political right and Estonia has no obligation under international law (see the second sentence of § 3(1) of the Constitution) to grant the right to vote to non-citizens (e.g. Article 1 paras 4.1 and 4.2 of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority; Article 25 of the United Nations International Covenant on Civil and Political Rights; see also Supreme Court Constitutional Review Chamber judgment of 2 October 2013, 3-4-1-44-13, para. 16).

39. Since the Constitution was amended in accordance with the proper procedure, the guarantees of local authorities must be interpreted on the basis of § 156 of the Constitution. Thus, the Constitution Amendment Act at issue does not interfere with the right of self-organisation of local authorities.

40. The applicant has also sought a declaration of unconstitutionality of § 5(2) of the MCEA, which entered into force on 9 July 2025. The amendment to § 5(2) of the MCEA is in conformity with the Constitution Amendment Act and directly reflects the content of § 156(2) of the Constitution, which entered into force on the same date. Therefore, the contested amendment to the electoral law does not interfere with the right of self-organisation of local authorities.

41. Since the contested provisions do not contravene the constitutional guarantees of local authorities within the meaning of § 7 of the Constitutional Review Court Procedure Act, the Chamber denies the application by Kohtla-Järve City Council on the basis of § 15(1)6) of the CRCPA.

(signed digitally)