



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	5-25-48
Date of judgment	3 October 2025
Judicial panel	Chair Villu Kõve, members Heili Sepp and Nele Siitam
Case	Complaint by the non-profit association Ausad Valimised against the activities of the National Electoral Committee
Participants in the proceedings	Applicant non-profit association Ausad Valimised, representative Märt Põder National Electoral Committee
Manner of examination	Written procedure

THE SUPREME COURT DECIDES AS FOLLOWS:

To satisfy the complaint in part and oblige the National Electoral Committee to reconsider the issue of access to the recording.

FACTS AND COURSE OF PROCEEDINGS

1. On 16 September 2025, the National Electoral Committee (NEC) forwarded to the applicant by e-mail the resolution made by the NEC in respect of the applicant at a meeting held on the same day.
2. On 17 September 2025, the applicant submitted questions to the NEC by e-mail, asking the NEC to forward the answers to the non-profit association Ausad Valimised as a participant in the proceedings. The NEC replied the following day. Among other things, the NEC refused to issue the recording of the meeting of 16 September 2025 to the applicant on the basis of § 35(2) clause 3 of the Public Information Act.
3. On 19 September 2025, the applicant requested the NEC by e-mail:
 - 1) to immediately forward to him, as a representative of the non-profit association, the recording made at the meeting so that he could examine it in accordance with § 84(2) of the Code of Administrative Court Procedure and § 53(5) of the Code of Civil Procedure (CCivP) and submit objections to it;
 - 2) to forward the minutes of the meeting after signing them so that he can submit objections to the minutes pursuant to § 53(2) of the CCivP;

3) to specify the procedure under which NEC meetings are held and complaints are heard;

4) to refrain from deleting the recording until the above issues have been resolved.

4. By e-mail of 22 September 2025, the applicant filed an election complaint with the NEC against an act of the State Electoral Office (SEO). The applicant referred to the questions set out in his e-mail of 19 September 2025 and added that if he, as a participant in the proceedings, is not allowed access to the recording and given a possibility to amend the minutes, this would interfere with the rights of the non-profit association Ausad Valimised as a participant in the proceedings as laid down in Chapter 12 of the Riigikogu Election Act (REA).

5. When forwarding the complaint to the Supreme Court, the NEC explained that it considered it to be a complaint against a directive regarding the organisation of NEC meetings, not against an act of the SEO. The NEC requests that the complaint be denied. The applicant's position regarding the applicability of § 84(2) of the Code of Administrative Court Procedure (and § 53 of the CCivP) is erroneous. Although the NEC has also applied the relevant provisions of the Code of Administrative Court Procedure in resolving complaints, in the absence of specific regulatory provisions it is the Administrative Procedure Act that applies to NEC proceedings. The election law does not require recording of meetings nor does it specify how minutes are to be prepared. Thus, § 18(1) clause 4 of the Administrative Procedure Act applies. Neither the Administrative Procedure Act nor the NEC working procedure provide for the possibility for a participant in proceedings to amend the minutes. The audio recording of the committee meeting is not for public use. It is done to facilitate preparation of the minutes of the meeting and is deleted after the minutes are signed. The obligation to make a recording made in the course of the NEC work available to the public can only arise from the law or the consent of persons. NEC members have not given such consent. Furthermore, the election laws do not confer on the applicant the rights of a participant in proceedings as laid down by § 27 of the Code of Administrative Court Procedure, nor is this possible considering the short deadlines for reviewing election complaints.

OPINION OF THE CHAMBER

6. The NEC has been correct in finding that this is a complaint against the activities of the NEC and not against the SEO. The NEC also rightly points out that, in the absence of specific regulatory provisions in the election law, the Administrative Procedure Act applies by analogy to the activities of the Electoral Committee (see e.g. Supreme Court Constitutional Review Chamber judgment of 12 June 2019, 5-19-31/2, para. 12 and the case-law cited therein). The Code of Administrative Court Procedure may be applicable by analogy only in a situation where no relevant set of norms exists in the election laws or the Administrative Procedure Act.

7. The NEC is of the opinion that the obligation to make a recording made in the course of the NEC work available to the public can only arise from the law or the consent of persons. The Chamber agrees with this only partially.

8. Under § 18(1) clause 4 of the Administrative Procedure Act, minutes of a procedural act are only taken if the obligation to take minutes arises from law. The obligation to take minutes of an electoral committee meeting is laid down in § 12(3) of the Riigikogu Election Act. Information recorded and documented on any medium in the course of performance of a public function is public information

(§ 3(1) Public Information Act). Thus, both the written minutes and the audio recording used to prepare them are considered public information within the meaning of the Public Information Act.

9. In the e-mail correspondence with the applicant, the NEC cited, first of all, § 35(2) clause 3 of the Public Information Act, as the basis for restricting access to the audio recording. According to this provision, “the following may be classified as information intended for internal use: [...] in justified cases, documents addressed to persons within the agency which are not registered in the document register (opinions, notices, memoranda, certificates, advice, etc.)”. A recording made for the purpose of preparing written minutes may be regarded as information referred to in § 35(2) clause 3 of the Public Information Act. However, it must be taken into account that the provision provides for the right of discretion in terms of whether to apply an access restriction (cf. § 35(1) of the Public Information Act), which is why a refusal to issue information must include, inter alia, relevant reasoning.

10. In its explanations submitted to the Supreme Court, the NEC has secondly cited the need to protect personal data. The audio recording contains the personal data of those who spoke at the meeting (including NEC members). The NEC may process the personal data of the meeting participants in the manner and to the extent necessary for performing a public function, regardless of whether the meeting participants have consented to such processing. In performing a public function, the processing of personal data is primarily based on Article 6(1)(e), and not point (a) (person’s consent), of the General Data Protection Regulation ((GDPR) (Regulation 2016/79 of the European Parliament and of the Council)) (see also e.g. GDPR recital 43). In doing so, the NEC must comply with the specific requirements laid down by Estonian law (see Article 6(2) and (3) of the GDPR) and keep in mind the principles set out in Article 5(1) of the GDPR, e.g. purpose limitation, data minimisation and storage limitation (Article 5(1) (b), (c) and (e) of the GDPR; see also the judgment of the Court of Justice in Case C-306/21 – Koalitsia “Demokratichna Bulgaria - Obedinenie”, paras 57–58).

11. If the requested information contains personal data, the holder of the information is obliged to classify it as information intended for internal use, but only if “enabling access to such information would significantly harm the inviolability of private life of the data subject” (§ 35(1) clause 12 Public Information Act). Thus, this ground for refusal also provides for discretion, and when relying on it the NEC must provide appropriate justifications as to why disclosing the information would significantly harm the inviolability of private life of the data subject(s).

12. The Supreme Court has explained that, where the grounds laid down by § 35 of the Public Information Act exist, restriction on access does not apply directly on the basis of law, but the decision to impose restriction on access must be made by the head of the agency, and it may even be imposed after the request for information has been submitted and resolved. At the same time, it must be taken into account that a participant in administrative proceedings enjoys a more extensive right of access to public information related to administrative proceedings than anyone outside the proceedings. This is because a participant in the proceedings has substantive rights at stake in the administrative proceedings. (See supreme Court Administrative Law Chamber judgment of 18 April 2022, 3-20-1265/25, paras 21 and 24; see also Supreme Court Constitutional Review Chamber judgment of 11 April 2025, 5-25-3/5, paras 18 and 22.) The latter also applies in a situation where the applicant for access to a recording is a person specified in Chapter 11 of the Municipal Council Election Act or Chapter 12 of the Riigikogu Election Act, who was a participant in the proceedings at the NEC meeting during the consideration of the complaint and wishes to challenge the decision made in relation to the complaint.

13. When granting access to a recording, an appropriate balance must be struck between the conflicting rights and interests. Interference with the public interest or the rights of the data subject to be protected by the access restriction can be significantly reduced, among other things, by the manner and extent of access granted. For example, it may be justified to refuse to issue a digital copy of an audio recording (by recording it on a portable medium or sending it by e-mail), while at the same time allowing to examine the recording on-site at the NEC offices with the right to make a manual transcript of it. Although the principles of purpose limitation, data minimisation and storage limitation justify the immediate deletion of the recording after written minutes have been prepared, the possibility of an individual's right to legal protection must still be taken into account. The latter would presumably justify short-term retention of the recording also until the appeal deadline and, if necessary, during the appeal proceedings. By law, the election appeal procedure is urgent.

14. For the above reasons, the refusal to grant the applicant access to the recording of the NEC meeting of 16 September 2025 is unlawful. The purpose of the complaint was to obtain access to the recording. The Supreme Court satisfies the complaint in part and, on the basis of § 46(1) clause 1 of the Constitutional Review Court Procedure Act, obliges the NEC to reconsider the issue of access to the recording. The grounds for refusal cited by the NEC in the course of the proceedings allow for a margin of discretion, which is why, in view of the foregoing, the NEC must consider and assess whether and how to give the non-profit association Ausad Valimised access to the requested information.

(signed digitally)