



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

EN BANC

JUDGMENT

in the name of the Republic of Estonia

Case number	5-25-7
Date of judgment	18 December 2025
Judicial panel	Chair Villu Kõve, members Velmar Brett, Oliver Kask, Hannes Kiris, Ants Kull, Kai Kullerkupp, Julia Laffranque, Saale Laos, Vahur-Peeter Liin, Heiki Loot, Kaupo Paal, Ivo Pilving, Paavo Randma, Kalev Saare, Juhan Sarv, Heili Sepp, Nele Siitam, Urmas Volens and Margit Vutt
Case	Complaints by Kaspar Kartanas and Sulev Švilponis against the actions of the National Electoral Committee
Basis for proceedings	Complaints by Kaspar Kartanas and Sulev Švilponis
Participants in the proceedings	Riigikogu Applicant Kaspar Kartanas Applicant Sulev Švilponis National Electoral Committee Chancellor of Justice Minister of Justice and Digital Affairs
Manner of examination	Written procedure

THE SUPREME COURT DECIDES AS FOLLOWS:

1. To satisfy the complaint by Kaspar Kartanas to the extent as it concerns the National Electoral Committee decision to declare the discussion of the fourth agenda item at the meeting of 12 June 2025 closed to the public, and as a result of which he was removed from the meeting. To deny the remainder of his complaint.
2. To satisfy the complaint by Sulev Švilponis.
3. To declare unlawful the National Electoral Committee decision to declare the discussion of the fourth agenda item at the meeting of 12 June 2025 closed to the public. Consequently, the removal of the applicants from the meeting is also unlawful.

FACTS AND COURSE OF PROCEEDINGS

1. On 12 June 2025, a meeting of the National Electoral Committee (NEC) was held in the Commander's House (*komandandi maja*) (Toompea 1) in Tallinn. On 10 June 2025, the State

Electoral Office published a notice regarding the time and place of the meeting, along with the meeting agenda, on the valimised.ee website. The following was stated regarding agenda item 4: “Establishment of the colour of the text and security features of the ballot paper for the municipal council elections to be held in 2025 (restriction on access to the information under discussion has been imposed on the basis of § 35(1) clause 9 of the Public Information Act).” The NEC chair also noted at the beginning of the meeting that observers must leave for the duration of discussion of the fourth agenda item.

2. K. Kartanas and S. Švilponis also attended the meeting as observers. At the beginning of the meeting, K. Kartanas addressed those present and the members of the NEC and asked for their consent to audio and video record the meeting. The NEC chair explained that the law does not give rise to the right to record the meeting and the NEC itself records the meeting for the purpose of taking minutes. The chair then addressed the other NEC members and asked whether recording should be allowed or not. The NEC members did not consent to the recording of the meeting, after which a request was made to put away the equipment that enables recording.

3. At the end of discussion of the third agenda item, the NEC chair announced that the discussion of the next agenda item had been declared as closed to the public. The chair also explained that the observers would be able to return to the meeting room for discussion of the final, i.e. the fifth, agenda item. Despite repeated requests to leave, the applicants did not leave, so the NEC called the police to remove the applicants from the room. After the discussion of the fourth agenda item, K. Kartanas returned to the meeting room.

4. K. Kartanas and S. Švilponis filed separate complaints with the Supreme Court challenging the actions of the NEC, which resulted in the applicants being removed from the meeting on 12 June 2025. K. Kartanas also challenged the NEC’s prohibition to record the meeting in question. By an order of 27 June 2025, the complaints were joined into single proceedings on the basis of § 52 of the Constitutional Review Court Procedure Act (CRCPA). By the same order, the proceedings were renewed on the basis of § 45(1) of the CRCPA. By an order of 5 September 2025, adjudication of the matter was referred to the Supreme Court *en banc* on the basis of § 3(3) of the CRCPA.

Complaint by K. Kartanas (unlawfulness of removal from the meeting)

5. K. Kartanas requests that the Supreme Court declare unlawful the NEC decision to remove the observers from the meeting of 12 June 2025. The removal of the observers disproportionately restricted the right to receive information about the activities of public authorities, as established by § 44 of the Constitution of the Republic of Estonia. Under § 12(3) of the Riigikogu Election Act (REA), NEC meetings are public and minutes of a meeting are taken. The NEC did not consider alternative options for dealing with this information. The police officers summoned to the meeting followed the chair’s instruction to remove the observers from the meeting and did not consider whether termination of the meeting or another measure would be more proportionate under § 71(1) of the Law Enforcement Act. Since the public is not able to obtain information about the security features of ballot papers, public oversight of the reliability of elections is excluded. Observers are unable to verify whether the security features are implemented. It must be possible to observe the procedure for voting and ascertaining the voting results.

Complaint by S. Švilponis

6. S. Švilponis seeks a declaration that the decision to remove him from the NEC meeting on 12 June 2025 was unlawful. Under § 12(3) of the REA and clause 4.3 of the NEC working procedure, NEC meetings are public. The law does not confer on the NEC the right to declare meetings partially or

fully closed to the public. Arising from § 23⁴(1) of the Municipal Council Election Act (MCEA), everyone has the right to observe the acts and procedures of election committees and election managers. Thus, the NEC's action of removing the applicant from the meeting violated his rights as an observer, since he could only participate in the meeting in question until the end of the discussion of the third agenda item. At a public meeting, it is possible to discuss documents subject to access restrictions without disclosing the sensitive information contained therein to observers. The prohibition on recording the meeting became clear only during the meeting. However, the NEC itself recorded the meeting without informing the observers and asking their permission to do so.

NEC's response to the complaints (unlawfulness of removal from the meeting)

7. The NEC objects to the complaints and asks that they be denied. The removal of the applicants for the duration of discussion of the fourth agenda item on 12 June 2025 was lawful. Under § 35(1) clause 9 of the Public Information Act, the NEC has the right and obligation to restrict observers' access to discussions where issues concerning security features of ballot papers are dealt with and decisions in that regard made. The Supreme Court has also said that an electoral committee has an obligation to protect information which, if disclosed to third parties, may jeopardise the orderly functioning and security of the electoral system. The purpose of security features is to eliminate the possibility of ballot papers being falsified. If the ballot paper's design, colour scheme and description of the security features become publicly available before the elections, a real risk arises that third parties may produce ballot papers that are difficult to distinguish visually from official ballots. This possibility would jeopardise the credibility and secrecy of elections, as well as the validity of the election results. The fact that voters are not aware of the security features of ballot papers does not prevent them from exercising higher state power.

8. As the NEC's work format is a meeting, it is not possible to discuss information subject to access restrictions outside of a meeting. Physical presence at a meeting does not mean that the person has the right to observe the discussion of information subject to access restrictions. The applicants knew before the meeting that the discussion of the agenda item in question would be closed to the public. This was evident both on the valimised.ee website as well as in an e-mail sent on 11 June 2025, informing that the public part of the meeting would take place on-site, but it is not possible to observe the discussion of the fourth agenda item. The observers had the right to continue observing the meeting after the discussion of the agenda item declared closed to the public had concluded.

Complaint by K. Kartanas (unlawfulness of the prohibition to record the meeting)

9. The applicant asks the Supreme Court to annul the NEC decision of 12 June 2025 prohibiting him to record the meeting. The applicant also seeks an obligation to be imposed on the NEC to disclose the recording of the meeting of 12 June 2025.

10. Given that an observer's task is to ensure the transparency of electoral processes, an observer must be able to record the actions of election managers. Pursuant to § 11 of the Personal Data Protection Act, the applicant gave notice of his intention to record the meeting. Section 56 of the European Parliament Election Act cannot be considered the legal basis for the prohibition, since the applicant did not intend to disclose the voting results through the recording. Recording the meeting would not have interfered with anyone's rights since an NEC meeting is public and it was also recorded by the NEC itself. The regulatory provisions governing observers' right to record are unclear and cause conflicts because, on the one hand, observers wish to prove the reliability of electoral processes and, on the other hand, the NEC restricts recording.

NEC's response to the complaint (unlawfulness of the prohibition to record the meeting)

11. The NEC objects to the complaint and asks it to be denied. The prohibition to record the meeting was related to data protection requirements and did not violate the applicant's observer rights. An observer does not enjoy a statutory right to record an NEC meeting or to interfere with its conduct. An observer's task is to independently monitor the election procedures, including the meeting, and this was ensured to the applicant. The applicant was later able to obtain information related to the meeting from the minutes to be made public.

12. The NEC members did not consent to the recording of the meeting. Section 11 of the Personal Data Protection Act does grant everyone the right to record any public event at their own discretion. An NEC meeting is not a recreational or a public event aimed at the general public, for which it is sufficient to fulfil the notification requirement in order to record it. It is a work format. The meeting must ensure that participants can work undisturbed and comply with data protection requirements. The minutes of the meeting are published in order to make the NEC work public. The NEC records its meetings in order to ensure that the minutes are accurate. After the minutes are signed, the recording is deleted. Therefore, the recording of an NEC meeting is not made public.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

[...]

OPINION OF THE COURT *EN BANC*

28. The Court *en banc* will first analyse whether the removal of the applicants from the NEC meeting on 12 June 2025 was lawful (I). It will then assess the NEC's prohibition on recording the meeting (II). Finally, the Court *en banc* will point out two issues concerning the NEC's organisation of work, which require the legislator's attention and additional consideration (III).

I

29. The NEC declared the meeting of 12 June 2025 partially closed, relying on § 35(1) clause 9 of the Public Information Act, i.e. taking into account that a document containing information subject to an access restriction imposed prior to the meeting in line with the aforementioned provision was to be discussed at the meeting. There is no dispute that the decision to classify the information in question (the colour of the text of the ballot paper and the security features) as for internal use was lawful. In the present case, the central question is whether the NEC's decision to declare the NEC meeting closed and, consequently, remove the applicants from the meeting in order to protect information subject to the access restriction was lawful.

30. The principle of public access to the work of electoral committees has been part of the Estonian legal order since 1992 (see the second sentence of § 18 of the Riigikogu of the Republic of Estonia Election Act (RT 1992, 13, 201)). Under § 12(3) of the current Riigikogu Election Act, a meeting of the NEC is public and minutes of it are taken.

31. Declaring the discussion of the agenda item at the NEC meeting closed to the public and, consequently, removing the applicants from the meeting, deviates from the obligation imposed on the NEC under § 12(3) of the REA to hold its meetings in public. The NEC's task is to ensure that the will of the people is expressed lawfully in elections, i.e. the composition of representative bodies exercising public authority is formed in an orderly and transparent manner. Therefore, the requirement

of public accessibility of NEC meetings fulfils a compelling purpose in a democratic system of government (see also Supreme Court Constitutional Review Chamber judgment of 11 April 2025, 5-25-3/5, para. 25). The public accessibility increases voters' confidence in the accuracy of election results and in the fact that the electoral principles set out in § 156(1) and § 60(1) of the Constitution, including the principle of free elections, have been complied with in the conduct of the elections. The latter requires, among other things, that both voters and candidates be sufficiently informed about the conduct of the elections (cf. cited 5-25-3/5, para. 19). The public accessibility also prevents the distortion of election results through fraud.

32. The NEC's decision to declare the discussion of the agenda item at the meeting closed to the public also interferes with the applicants' statutory right as observers to monitor the NEC's acts and procedures (§ 23⁴ MCEA, see Supreme Court Constitutional Review Chamber judgment of 23 July 2025, 5-25-18/6, para. 26 and the case-law cited therein). Under the current law, anyone can be an observer in Estonia (see § 23⁴(1) MCEA). As representatives of the public, observers play an important role in ensuring that elections are conducted in accordance with electoral principles and are, ultimately, democratic (see Supreme Court Constitutional Review Chamber judgment of 13 November 2025, 5-25-65/2, para. 10 and the case-law cited therein).

33. In line with § 104(2) clauses 2 and 4 of the Constitution, the Riigikogu Election Act and the Municipal Council Election Act may be passed and amended only by a vote by the majority of the members of the Riigikogu. The Court *en banc* is of the opinion that the principle of public access to the work of electoral committees, including exceptions thereto, is an important issue in terms of the constitutional order of the state, which essentially falls within the sphere of regulation of the laws specified in § 104(2) clauses 2 and 4 of the Constitution (see also Supreme Court *en banc* judgment of 26 April 2016, 3-2-1-40-15, para. 46).

34. Neither the REA nor the MCEA as constitutional laws provide for any exception to the principle of public access to an NEC meeting, i.e. the possibility to declare an NEC meeting partially or entirely closed to the public and, consequently, remove observers from the meeting.

35. The NEC deviated from the requirement of public accessibility of meetings laid down by § 12(3) of the MCEA, relying on § 35(1) clause 9 of the Public Information Act. The latter provision was established by § 2 of the Act Amending the State Borders Act and Other Acts (RT I 2007, 68, 420). Seventy-six members of the Riigikogu voted in favour of passing this Amending Act (see the verbatim record of the XI Riigikogu of 4 December 2007, agenda item 1).

36. Under § 35(1) clause 9 of the Public Information Act, an information holder must classify information related to description of security systems, security organisation or security measures as for internal use only. Such a decision constitutes an administrative act (see e.g. Supreme Court Administrative Law Chamber judgment of 18 April 2022, 3-20-1265/25, para. 24 and the case-law cited therein). Classifying information for internal use only changes the public law status of the document containing the relevant information. Thereafter, all people who come into contact with this document must take into account the restrictions and obligations laid down by law (see e.g. § 12(4¹), § 23(1) clause 1, § 54¹ Public Information Act; § 55 Civil Service Act; cf. also Supreme Court Administrative Law Chamber order of 7 May 2003, 3-3-1-31-03, para. 16). In addition to the above, classifying information as for internal use only entails the obligation on the information holder to protect the information from unwanted disclosure (§ 43(1) clause 3 Public Information Act and § 7(3) Administrative Procedure Act).

37. The Court *en banc* is of the opinion that, regardless of the majority of votes by which § 35(1) clause 9 of the Public Information Act was enacted (see para. 35 of the judgment above), this provision

– neither on its own nor in conjunction with the aforementioned provisions of the Public Information Act, the Civil Service Act and the Administrative Procedure Act – creates no legal basis for declaring an NEC meeting closed to the public.

38. Section 35(1) clause 9 of the Public Information Act was not enacted to supplement the provision of § 12(3) of the REA or to deviate from it exceptionally (cf. Supreme Court Constitutional Review Chamber judgment of 27 February 2015, 3-4-1-54-14, para. 51). The Public Information Act does not regulate the public accessibility of an NEC meeting, but rather specifies what type of information a document must contain to be deemed for internal use only. Section 35(1) clause 9 of the Public Information Act does not grant the NEC the right to apply any measures to protect from disclosure information classified for internal use and which the NEC must discuss at a meeting in order to perform its statutory duties (§ 43(1) clause 3 Public Information Act and, in the present case, § 43(1) MCEA). Due to the unequivocal prohibition arising from § 12(3) of the MCEA, the NEC is not able to declare a meeting closed in order to protect information subject to access restrictions from unwanted disclosure. The current law obliges the NEC to find a solution for holding a meeting in public even when this requirement conflicts with a countervailing public interest which necessitates the NEC's obligation to protect information discussed at the meeting from unwanted disclosure.

39. Based on the foregoing, the Court *en banc* finds that the NEC's decision to declare the discussion of the fourth agenda item at the meeting of 12 June 2025 closed and, consequently, remove the applicants from the meeting, was unlawful.

II

40. The NEC prohibited the applicant from recording the meeting of 12 June 2025 (see para. 2 above). The applicant challenges the prohibition on the basis of § 11 of the Personal Data Protection Act (see para. 10 above). The Court *en banc* does not agree with this interpretation.

41. Section 11 of the Personal Data Protection Act provides a legal basis for the processing of personal data in a public place. According to § 54 of the Law Enforcement Act, a public place is a territory, building, room or a part thereof given to an unspecified number of persons for use or used by an unspecified number of persons, as well as a public transport vehicle. The Court *en banc* is of the opinion that the NEC premises, to which not everyone has unrestricted access, are not a public place within the meaning of this provision. Nor is an NEC meeting a public gathering (meeting or event) within the meaning of § 58 of the Law Enforcement Act.

42. The NEC has the right to process the personal data of meeting participants for performing a public task on the basis of Article 6(1)(e) of the GDPR (see also Article 6(2) and (3) of the GDPR). Recording a public meeting interferes with the right of those present (including NEC members) to the protection of personal data, which, in cases where a person is identifiable, includes, for example, their appearance, oral speech, assessments and views expressed, and possibly also information displayed on the phone or computer screen captured on the recording, and the like. The NEC has the right to record the meeting and, in doing so, process the personal data of the meeting participants to the extent, in the manner and to the degree necessary to fulfil the obligation to keep minutes laid down by § 12(3) of the REA (see also Supreme Court Constitutional Review Chamber judgment of 3 October 2025, 5-25-48/2). If the NEC holds a public meeting in the frame of performing a public task, it must, under Article 5(2) and Article 24 of the GDPR, ensure that not only the NEC itself but also other participants comply with the principles of personal data processing, including lawfulness, purpose limitation and data minimisation (Article 5(1) (a), (b) and (c) of the GDPR). Based on the combined effect of these norms, the NEC has the right, taking into account the circumstances of the situation, to prohibit other persons present at the meeting, including observers, from recording the meeting (see also the judgment

of the EU Court of Justice C-306/21 – Koalitsia „Demokraticzna Bulgaria – Obedinenie”, paras 57 and 58).

43. The prohibition on recording does not interfere with the observer’s statutory right to observe an NEC meeting (§ 23⁴ MCEA), but it does limit the observer’s ability to prove alleged violations at the meeting (see also Supreme Court Constitutional Review Chamber judgment of 24 October 2025, 5-25-54/2, para. 13). At the same time, the risk that a recording of a public NEC meeting could be used without restriction in mass or social media in the future, including by taking statements out of context or distorting them, seriously interferes with the right of meeting participants to the protection of personal data. Therefore, taking into account the principles of purpose limitation and data minimisation in conjunction with interference with the data subjects’ rights, the prohibition to record the NEC meeting on 12 June 2025, and thereby interference with the applicant’s statutory right as an observer, was lawful.

44. The applicant requests that the Supreme Court oblige the NEC to disclose the recording of the meeting of 12 June 2025. The Court *en banc* is of the opinion that the NEC has no legal obligation to disclose the recording of the meeting (about granting access to participants in proceedings, see also the cited 5-25-48/2, paras 12 and 13). Instead, the NEC makes the content of the meeting available to the public by fulfilling its obligation to take minutes of the meeting and make them public (§ 12(3) and (4) REA).

45. Based on the foregoing, the NEC decision to prohibit the applicant from recording the meeting of 12 June 2025 was lawful. To the relevant extent, the Court *en banc* denies the complaint by K. Kartanas, relying on § 46(1) clause of the Constitutional Review Court Procedure Act.

III

46. Section 12(3) of the REA obliges the NEC to always proceed from the principle of public accessibility of a meeting. Such an approach fails to take into account that there may be a compelling countervailing interest in favour of declaring a meeting, in part or in its entirety, closed to the public. Furthermore, under the current law, the question of whether, and to what extent, a substantive discussion can even take place at a public meeting regarding an agenda item containing information subject to access restrictions is irrelevant. In the opinion of the Court *en banc*, the issue needs the attention of the legislator in order to find a constitutional solution to a possible conflict that may arise between conflicting rights and interests in the course of the NEC work.

47. In the interests of legal clarity, it would be reasonable for the legislator to establish more precise regulations regarding whether, by whom and under what conditions it is permissible to record or broadcast an NEC meeting. In doing so, an appropriate balance must be struck between, on the one hand, the protection of personal data and the free exchange of ideas and, on the other hand, the rights of observers and the public interest.

(signed digitally)