



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	5-25-8
Date of judgment	27 June 2025
Judicial panel	Chair Juhan Sarv; member Vahur-Peeter Liin and Ivo Pilving
Case	Complaint by Andre Eli against the National Electoral Committee resolution No 33 of 12 June 2025
Participants in the proceedings	Applicant Andre Eli and the 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 12 June 2025, the National Electoral Committee (NEC) adopted resolution No 33 on “Determination of operating systems for the voter application and the vote verification application in the 2025 municipal council elections” (RT III, 17.06.2025, 2). On the basis of § 48³(5) of the Riigikogu Election Act (REA), this resolution addressed, among other things, the question of which operating systems would be supported by the voter application for electronic voting. The resolution does not stipulate the creation of a voter application for mobile device operating systems.

Complaint

2. Andre Eli applies to the Supreme Court for annulment of the NEC resolution insofar as it failed to create the possibility to vote with a mobile device. The applicant seeks an order obliging the NEC to make a new decision on the matter at issue, based on an objective technical assessment.

3. The applicant notes that § 48³(5) of the REA also allows the use of a mobile device for electronic voting if the NEC has made such a decision. The legislator authorised the NEC to find a technical solution for voting with a mobile device, but not to make a political decision on whether to allow such voting at all. The NEC had the right to prohibit or restrict voting with a mobile device only if the security or reliability of the voting system cannot be guaranteed in a manner that would allow

electronic voting to be conducted in accordance with the requirements of the law. No such circumstances currently exist. The NEC resolution is unfounded and contains errors of discretion, and is therefore unlawful. During the deliberation of the NEC resolution of 12 June 2025, some committee members presented arguments against voting with a mobile device based on subjective attitudes, which do not provide grounds for refusing to create this method of voting. Both the State Electoral Office and the Information System Authority confirmed that voting with a mobile device can be organised in compliance with the requirements of the law.

4. In the applicant's opinion, the NEC resolution, in the part in dispute, violates his subjective rights, more specifically the right to vote established in § 156 of the Constitution of the Republic of Estonia, as well as the principle of freedom and universality of elections and the fundamental right to equality. As no voter application will be created for the operating systems of mobile devices for the 2025 municipal council elections, the applicant's right and opportunity to vote in a manner suitable for him and permitted by law will be restricted. During the elections, the applicant may find himself in a situation where voting with a mobile device would be the only way for him to participate in the elections.

Reply to the complaint

5. The NEC objects to the complaint and asks it to be denied.

6. The contested resolution does not interfere with the applicant's subjective rights. Section 48³(5) of the REA does not oblige the NEC to create a voter application for mobile device operating systems, but authorises it to do so if technical possibilities and security considerations allow it. The right to vote does confer on a person a subjective right to vote with a mobile device. There will be five voting options in the 2025 municipal council elections, and it is unlikely that the applicant will not be able to use any of them.

7. The contested resolution contains no errors of discretion. A voter cannot independently verify the integrity of a voter application downloaded from Google Play or the App Store. This reduces the transparency and credibility of elections. Test versions of a voter application for mobile device operating systems were verified in May 2025. Testing revealed that voting with a mobile device is secure. However, the NEC was not able to be satisfied whether the phone application was entirely auditable and whether the audit process was fully transparent and reliable.

OPINION OF THE CHAMBER

8. The Chamber does not agree with the applicant that § 48³(5) of the REA confers on him the right to vote with a mobile device and that the NEC may only restrict this right (§ 12(2) clause 4 Municipal Council Election Act).

9. Under § 53² of the Municipal Council Election Act, electronic voting in municipal council elections is organised in accordance with the procedure laid down in Chapter 7¹ of the Municipal Council Election Act. Section 48³(5) of the REA lay down that the voter application is created for the most widespread computer operating systems and the vote verification application for the most widespread mobile device operating systems. The voter application may also be created for mobile device operating systems. Prior to each election, the National Electoral Committee by its resolution determines the operating systems for which the applications are created.

10. The second sentence of § 48³(5) of the REA, in conjunction with the third sentence of the same subsection, grants the NEC broad discretion in deciding on the creation of the voter application for a mobile device operating system, proceeding from the public interest and not from the interest of a specific voter (see also Supreme Court Special Panel judgment of 20 December 2001, 3-3-1-15-01, para. 22). Thus, the law does stipulate a voter's subjective right to demand the creation of a voter application for a mobile device operating system.

11. In the 2025 municipal council elections, voters have sufficient opportunities to cast their vote both electronically and by paper ballot at or outside a polling station, including in the course of advance voting. Voters in Estonia have never had the option to vote with a mobile device in municipal council, Riigikogu or European Parliament elections. By defining the active right to vote on the level of a law so that it does not include mobile voting, the legislator has not acted arbitrarily or otherwise unconstitutionally.

12. For the above reasons, the Chamber is of the opinion that the NEC resolution of 12 June 2025 does not violate the applicant's rights and his complaint must be denied on the basis of § 46(1) clause 2 of the Constitutional Review Court Procedure Act.

(signed digitally)