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ACCESS TO ELECTORAL RIGHTS

LITHUANIA

Dainius Žalimas

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Access to Electoral Rights

Lithuania

Dainius Žalimas

1. Current Debates

1.1. Introduction

This Report provides a comparative review of electoral rights and procedures in Lithuania. Its task is to review and compare the electoral rights of and electoral procedures applied to non-resident citizens (Lithuanian citizens permanently residing abroad, including in other EU Member States), EU citizens (citizens of other EU Member States permanently residing in Lithuania) and foreign residents (third country or non-EU citizens permanently residing in Lithuania) with the electoral rights of and procedures applied to citizen residents (Lithuanian citizens permanently residing in Lithuania).

The Report covers all types of elections and referenda in Lithuania:

1) European elections – elections to the European Parliament for Lithuania. Twelve out of 754 members of the European Parliament are elected for Lithuania under a system of proportional representation with preferential voting¹ where the entire territory of the state is regarded as one multi-mandate constituency. Preferential voting, used also in national and local legislative elections, is a majoritarian element incorporated into the proportional system of elections. It provides the possibility (not an obligation) for each voter to express his/her attitude towards individual candidates, included on the party list he/she is voting for, by indicating on a ballot the numbers of up to five preferred candidates. The final order of appearance of the candidates from a party list depends on the priority votes cast for them during preferential voting.

2) National elections – national legislative (parliamentary) and presidential elections, as well as national referendums. As regards national parliamentary elections, every four years 141 members of the Seimas are elected under a mixed system² (semi-proportional and semi-majoritarian). Half of the Seimas (70 MPs) are elected under a proportional system with

¹ Elections to the European Parliament in Lithuania are regulated by the Law on Elections to the European Parliament, adopted on 20 November 2003 with last amendments of 2 October 2012 (English version of 14 December 2010 available). The proportional system with preferential voting is established under Arts. 1(3), 2(4) and 56(2) of this Law.

² Elections to the Seimas are regulated by the Law on Elections to the Seimas, adopted on 9 July 1992 with the last amendments on 2 October 2012 (English version of 29 March 2012 available). The electoral system is established in particular by Arts. 1, 9, 58(4) of the Law.

preferential voting where the entire territory of the State is regarded as one multi-mandate (multi-member) constituency and another half (71 MPs) is elected under a majoritarian system in 71 single-mandate (single-member) constituencies. Presidential elections have to be organised every five years.³ There are two types of national referendums: binding and consultative. A referendum must be binding on key constitutional issues or when 300 thousand citizens or the Seimas require that it be so. In all other cases a referendum has to be consultative.⁴

3) Local elections – local legislative (municipal councils) elections and local referendums (local population opinion polls). Municipal elections take place every four years. Municipal councils are elected in 60 municipalities (60 multi-mandate (multi-member) constituencies) under a proportional system with preferential voting. Depending on the size of the population in a respective municipality, the number of councillors can range from fifteen up to 51.⁵ A local population or opinion poll may be only to a certain degree regarded as a referendum.⁶ Although a local opinion poll has to be based on similar electoral principles as a referendum, such as voluntary participation and the universal and equal right to voice opinion directly, a few types of local population polls (such as direct entering of individual's opinions in questionnaire forms, sample surveys at the homes of voters or by phone) do not strictly comply with those principles as they are based on a selection of respondents. On the other hand, if the poll is conducted by way of some form of voting, the voting cannot be considered secret as it takes place in a public meeting. A local opinion poll is always consultative, though in cases provided by other laws it has to be held before resolving certain issues by a competent authority (for example, a poll of the local population concerned has to be held before establishing a new municipality or changing the boundaries of a municipality).⁷

There are no popular local executive (mayoral) elections in Lithuania: local mayors are elected by the local councils by their members.⁸ Additionally, there are no regional elections or referenda in Lithuania: there are no regional (self-)government authorities, and the governance of regions (of which there are ten) has to be organised by the central Government (Art. 123 of the Constitution).

2.2. Contextual backdrop

Since 1992, the year when the current Constitution of the Republic of Lithuania was adopted and entered into force, there have been no radical changes in the electoral system. A significant exception is the introduction of elections to the European Parliament, as a consequence of the country's accession to the European Union. Public interest in European

³ Presidential elections are regulated by the Law on Presidential Elections, adopted on 22 December 1992 with the last amendments on 14 December 2010 (English version of 14 December 2010 available).

⁴ A national referendum is regulated by the Law on Referendum, adopted on 4 June 2002 with last amendments on 12 September 2012 (English version of 12 September 2012 available). Binding referendums on key constitutional issues have to be held under Art. 148 (1, 2) of the Constitution; both types (binding and consultative) of referendums are set by Arts. 3-5 of that Law.

⁵ Municipal elections are regulated by the Law on Elections to Municipal Councils, adopted on 7 July 1994 with last amendments on 2 October 2012 (English version of 14 December 2010 available). The proportional system with preferential voting is established under Arts. 1(1) and 55(2) of the Law.

⁶ A local population poll procedure is regulated by Chapter 9 (Arts. 36-47) of the Law on Local Self-Government, adopted on 7 July 1994 with last amendments on 17 October 2012 (English version of 1 December 2011 available).

⁷ Art. 7 of the Law on Territorial Administrative Units and Their Boundaries (version of 30 March 2010).

⁸ Art. 19(1) of the Law on Local Self-Government.

Parliament elections is less than half that in national elections (in 2009 only slightly more than twenty per cent of voters participated in EP elections, while in 2009 and 2012 more than 50 per cent of voters cast their ballots in both national presidential and national parliamentary elections).⁹ The ability of non-resident citizens and EU citizens permanently residing in Lithuania to vote in EP elections is not a major topic of public debate. There is, however, a more general debate on introducing e-voting for non-resident citizens in national and European elections. One minor change to Lithuania's local elections, related to its membership in the EU, has to be mentioned. On 20 June 2002 the Seimas amended Art. 119 of the Constitution, to extend the franchise in local elections beyond citizen residents to all permanent residents of the municipalities, including EU citizens and third country nationals (TCNs). This measure was rather uncontroversial, largely because it was seen as a natural part of becoming an EU Member State and because there was only a very small percentage of foreigners permanently residing in Lithuania. Another constitutional change regarding local elections involved increasing the term of office of municipal councils from a two year initial term to a three year term in 1997 and, finally, to a term of four years in 2002. This measure has helped to create more favourable conditions for effective and stable municipal authorities.

Concerning changes in electoral legislation that affect the voting rights of non-resident citizens and citizen residents who are temporarily abroad on election day, there has been a gradual limitation of the possibilities to vote in places other than a polling station where the voter is registered. These limitations were provoked by the rising public concern with the issue of voters being bribed when casting their ballot by post or early voting at home, as well as the corresponding public demands to ensure fairness and transparency of elections.

Until 2005, voters who were temporarily out of their polling station territory were allowed to vote in any post office within the national territory five days before an election day. This practice made it more difficult to monitor the voting process and thereby ensure the transparency and fairness of elections. Therefore, from 2005 to 2008, postal voting was restricted to disabled and elderly persons in medical and social care facilities, and to military and related personnel provided that its members cannot vote at their designated polling stations on an election day. Furthermore, early postal voting was made possible for only two days (Wednesday and Thursday) before an election day while the number of places where the postal vote could be cast were significantly reduced. These measures have helped to ensure the fairness and transparency of elections. However, the specific problem of bribery of voters has not been solved in general and is still very high on the political agenda. For instance, on 26 October 2012 the Constitutional Court upheld the decisions of the Central Electoral Commission to annul the voting results of parliamentary elections in one single-member constituency due to the widespread bribery of voters during the whole electoral process and the incapability of the Central Electoral Commission to take timely and effective action by removing the responsible candidate from the elections.¹⁰ On 6 November the Constitutional Court was also requested (both by the Seimas and the President) to assess the voting results of the 2012 parliamentary elections in a multi-mandate constituency.

A number of other initiatives, which have either failed or are pending, are also worth noting. The first such initiative was an attempt to introduce local executive (mayoral) elections by amending Art. 119 and other related provisions of the Constitution. Although the

⁹ According to the data provided by the Central Electoral Commission of the Republic of Lithuania (www.vrk.lt).

¹⁰ The 26 October 2012 Conclusion of the Constitutional Court on the Inquiry of the President of the Republic whether the Law on Elections to the Seimas was not breached during the 2012 Elections.

idea of mayors elected directly by respective local communities is widely supported among the public, and it is hard to find a political party that would openly resist the idea, all attempts to change the Constitution have failed in the Seimas. The reason for such a failure was the inability of political parties to agree on a single vision of the powers that would be granted to a democratically elected mayor and the relationship that this position would have with the municipal council.

A second initiative, which also failed in 2012 in the Seimas, was to reduce the age threshold for running as a candidate in parliamentary elections from the current threshold of 25 years to a new threshold of 23 by amending Art. 56 of the Constitution. This initiative was an attempt to get the youth more involved in politics and in parliamentary affairs.

A third initiative, which also failed in 2012, but did not involve proposals to change the Constitution, is an attempt to introduce e-voting. The original argument in favour of such a proposal was to keep up with technological progress and attract the youth to participate in elections. However, this initiative was of particular importance for non-resident citizens who would find it most convenient to cast their votes in this manner (an idea that the World Lithuanian Community has lobbied the Seimas over). The parliamentary committees on legal affairs and state management proposed to discontinue consideration of the proposed draft amendments to the Law on Elections to the Seimas as they found them to be contrary to the Constitution, in particular the constitutional principles of secret and direct voting. The main concern was that it would be impossible to ensure compliance with those principles with the introduction of e-voting. Nevertheless there is a high probability that new initiatives to introduce e-voting will be debated by the Seimas in the near future because of increasing public demand for that method of voting.

One defect of Lithuanian electoral legislation is the lack of harmonisation between electoral laws (special laws on European, parliamentary, presidential, local elections and referendum) in terms of technical details and procedures, despite the fact that they share similar and often identical provisions. On 15 March 2012 the Seimas adopted the Constitutional Law on the List of Constitutional Laws, whereby the Electoral Code and the Law on Referendum are to be included in that list. This can be seen as a commitment by the Seimas to review all electoral legislation, to establish consistent regulation and to codify it into one Electoral Code with the force of constitutional law.

1. Eligibility: Who has electoral rights under national law?

The task of this section is to provide a summary overview of voting rights in Lithuania for three categories of voters: citizen residents, non-resident citizens, and third country national residents.

2.1. Citizen residents

Citizen residents, in the present context, are to be understood as citizens of the Republic of Lithuania who are permanently residing in Lithuania (i.e. in one of its municipalities). Art. 3(2) of the Declaration of the Place of Residence defines the place of principal residence as the abode in which the person actually lives most of the time. For a citizen to be considered a permanent resident in Lithuania, he or she must be formally registered as such in the population register. According to Art. 4(1) of the same Law, the following persons have to declare their place of permanent residence in Lithuania¹¹: 1) Lithuanian citizens who have

¹¹ The citizens of Lithuania and other permanent residents of Lithuania have also to declare their new place of permanent residence if they are changing their place of residence in the Republic of Lithuania or if they are

lived in the Republic of Lithuania for more than 183 days per year; 2) citizens of other EU Member States or a European Free Trade Agreement Member State who have come to live in the Republic of Lithuania for a cumulative period of more than three months within a six month period; 3) citizens of other foreign states who have a residence permit in the Republic of Lithuania and stateless persons who have come to live in the Republic of Lithuania.

The definition of permanent residence is slightly broader when it comes to municipal elections. Apart from the permanent residence formally declared under the Law on Declaration of the Place of Residence, Art. 2(3) of the Law on Elections to Municipal Councils also includes into the definition of permanent residence the place of permanent residence other than formally declared, that is the place of residence within a given municipality that is publicly declared by a person, when such a place of residence can be regarded as his/her principal place of residence. This broader definition expresses a desire to establish more flexible conditions for politicians with a place of permanent residence in municipalities other than that in which they wish to run.

Despite living abroad, diplomatic and consular staff of the Republic of Lithuania and their family members, Lithuanian citizens serving in EU institutions or international organisations and their family members, as well as members of Lithuanian armed forces and related personnel deployed abroad are regarded as citizen residents (Art. 7(2) of the Law on Declaration of the Place of Residence) They are therefore entitled to the same legal status as citizen residents and are not subject to restrictions of passive voting rights imposed on non-resident citizens.

Citizen residents are generally fully enfranchised in all elections and referenda. Certain categories of citizen residents, however, are excluded from the franchise on the following grounds:

Age: Eighteen years of age, as provided for in Art. 34(1) of the Constitution¹², is the threshold for voting in all types of elections and referenda. When it comes to running as a candidate, as a rule, the more responsible and prestigious the office the higher the age threshold. Municipal councils, allowing candidates to run once they have reach twenty years old, is the lowest age threshold.¹³ For the European Parliament, the required age is 21¹⁴ whereas it stands at 25 for national parliamentary elections¹⁵ and 40 for presidential elections.¹⁶ The established age thresholds for running as a candidate have never been changed.

Mental disabilities: Mentally disabled persons are disenfranchised. The basis for their disenfranchisement is Art. 34(3) of the Constitution which provides that: “Citizens whom court deems to be incapable shall not participate in elections.”

Thus the necessary condition for disenfranchising mentally disabled persons is the judicial decision to declare them legally incompetent. Mentally disabled persons can be

leaving the Republic of Lithuania for a period longer than 6 months (Art. 4(1) of the Law on Declaration of the Place of Residence).

¹² According to Art. 34(1) of the Constitution, “citizens who, on the day of election, have reached 18 years of age, shall have the electoral right”.

¹³ Art. 2(2) of the Law on Elections to Municipal Councils.

¹⁴ Art. 3(4) of the Law on Elections to the European Parliament.

¹⁵ Art. 56(1) of the Constitution (repeated in Art. 2(2) of the Law on Elections to the Seimas).

¹⁶ Art. 78(1) of the Constitution (repeated in Art. 2(1) of the Law on Presidential Elections).

declared incapable by the court of ordinary jurisdiction in accordance with Art. 2.10(1) of the Civil Code provided that, due to reasons of mental illness or dementia, they are not able to understand the meaning of their actions or to control them. The names of persons declared incapable by the court have to be entered into the special closed (i.e. not public) register of incapable persons and persons with limited capability.

Persons convicted of criminal offences: Concerning active electoral rights, persons convicted of criminal offences are not disenfranchised as they may vote by post from their places of detention. Regarding passive electoral rights, both imprisoned persons and those who have been convicted of a crime but have not yet served the sentence imposed upon them by the court (whether it amounts to imprisonment or, for example, a fine) are disenfranchised.¹⁷

Other grounds for disenfranchising: A further general restriction on passive electoral rights applies to all types of elections. Specifically, a person is disenfranchised from standing as a candidate if he/she holds an office incompatible with political activity (e.g. being in the service of the armed forces, the police or similar statutory service, or the judiciary) (Arts. 113(2) and 141 of the Constitution; also stated in all relevant electoral laws)¹⁸.

There are also specific grounds for disenfranchising persons in different types of elections. In the case of European elections, a person may be enfranchised to vote or run as a candidate in one EU country only (Art. 4 of the Directive 93/109/EC on European Parliament elections). Therefore a person must be disenfranchised in Lithuania if he/she votes or stands as a candidate in elections to the European Parliament in another EU Member State (Art. 3(3 and 4) of the Law on Elections to the European Parliament). This restriction applies both to citizen residents and EU citizen residents.

For elections to the national parliament and the presidency, there are two further restrictions for citizen residents to stand as candidates in elections. First, candidates must have only Lithuanian citizenship so that they are not bound by an oath or pledge to a foreign state (Art. 56(1) of the Constitution, Art. 2(2) of the Law on Elections to the Seimas; Art. 78(1) of the Constitution, Art. 2(1) of the Law on Presidential Elections). Second, in accordance with Arts. 59(2) and 74 and 82(1) of the Constitution, as interpreted by the Constitutional Court in its rulings of 25 May 2004 and 5 September 2012, any MP or President or any other state official¹⁹ who has been impeached for a gross violation of the Constitution or a breach of the constitutional oath can never be elected to the Seimas or the presidency. In this manner the Constitutional Court tried to balance individuals' electoral rights with national security concerns to have loyal and trustworthy persons in the highest state offices. However, the constitutional ban for life to run as a parliamentary candidate for impeached national representatives was deemed to be disproportionate and in breach of Art. 3 of Protocol No. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights in its Grand Chamber judgment of 6

¹⁷ The legal basis for such a restriction is provided for both by the Constitution (for parliamentary and presidential elections – in Arts. 56(2) and 78(1) of the Constitution) and the electoral laws (Art. 3(5) of the Law on Elections to the European Parliament; Art. 2(3) of the Law on Elections to the Seimas; Art. 2(1) of the Law on Presidential Elections; Art. 2(4) of the Law on Elections to Municipal Councils).

¹⁸ Art. 3(6) of the Law on Elections to the European Parliament; Art. 2(4) of the Law on Elections to the Seimas; Art. 2(1) of the Law on Presidential Elections; Art. 2(5) of the Law on Elections to Municipal Councils.

¹⁹ The full list of the highest state officials who may be impeached is provided in Art. 74 of the Constitution.

January 2011 in the *Paksas v. Lithuania* case. This judgment has not been yet been implemented in the Lithuanian Constitution.

There are two more specific requirements that must be met to run as a candidate in presidential elections. First, one must be a Lithuanian citizen by origin in the sense of acquiring citizenship by birth in virtue of having at least one parent who is a Lithuanian citizen (Art. 78(1) of the Constitution, Art. 2(1) of the Law on Presidential Elections). Second, one must have lived in Lithuania for at least three years prior to election (Art. 78(1) of the Constitution, Art. 2(1) of the Law on Presidential Elections).

2.2. Citizens abroad

This section reflects the general electoral rights of citizens who either are temporarily outside the country or reside permanently abroad. As mentioned already, citizen residents are those citizens of the Republic of Lithuania who live in Lithuania at least 183 days per year; the Lithuanian citizens are presumed to be permanently residing abroad if they leave Lithuania for a period of longer than six months. However, this presumption is not applied to diplomatic and consular staff of the Republic of Lithuania and their family members, Lithuanian citizens serving in EU institutions or international organisations and their family members as well as members of Lithuanian armed forces and related personnel deployed abroad. Such persons are considered as citizen residents who are temporarily abroad (Arts. 4(1) and 7(2) of the Law on Declaration of the Place of Residence).

Permanent residence in a given municipality is a general condition for exercising the right to vote only in municipal elections (Art. 119(2) of the Constitution) and it is also a condition for participating in local opinion polls (Art. 36(4) of the Law on Local Self-Government).

As for passive electoral rights, permanent residence in a country (a municipality) is a general condition to run as a candidate in both national and municipal elections. This residence requirement is provided for by Art. 56(1) of the Constitution and repeated in Arts. 2(2) and 37(1) of the Law on Elections to the Seimas, for presidential elections – by Art. 78(1) of the Constitution (repeated by Art. 2(1) of the Law on Presidential Elections).²⁰ As already mentioned, according to Art. 2(1 and 3) of the Law on Elections to Municipal Councils, a public declaration of the prospective candidate's permanent residence in a respective municipality is necessary to participate in elections to the council of that municipality.

Citizen residents who are temporarily absent on an election day

As regards national elections, citizens who are temporarily absent on election day have several possibilities to cast their votes.²¹ They may personally cast their vote at diplomatic missions and consular establishments. Alternatively, provided they have informed the diplomatic mission or consular service of their address abroad, they may send their vote by post to the diplomatic mission or consular service. For military personnel stationed abroad the commanders of military units are responsible for making postal voting accessible to their staff. Voting is possible on ships provided that there are at least five voters aboard; the ship

²⁰ As mentioned already, here the qualified residential requirement is applied, that is to live in Lithuania not only on a day of registration of a candidate, but for not less than the last three years preceding elections.

²¹ See: Arts. 67-1(2), 68, 69(1), 70 and 72 of the Law on Elections to the Seimas; Arts. 58, 59, 60, 62, 64(2) of the Law on Presidential Elections; Arts. 55, 56, 57, 59 and 60-1(2) of the Law on Referendum.

has left a port of the Republic of Lithuania not later than four days prior to an election day and will not return until after the election day; and where there is no possibility for voters in these ships to vote in their polling stations or by post, or in a diplomatic mission or consular establishment of the Republic of Lithuania. Early postal voting at designated municipal premises is possible for voters who are unable to come to a polling station on election day due to their leave abroad, but who are leaving the country no sooner than the Wednesday or Thursday preceding election day.

For municipal elections two of the above mentioned voting methods are not available, namely personal voting at diplomatic missions and consular establishments and voting on ships. Presumably the reasons not to provide these possibilities are related to the general disenfranchisement of non-resident citizens in municipal elections, the relatively small number of those citizen residents who, temporarily abroad, could come to the diplomatic missions and consular establishments, as well as the practical difficulties of organising voting abroad for 60 different municipal constituencies. Therefore there are only two alternative methods for casting votes in municipal elections for those citizen residents who are temporarily abroad on an election day:²² 1) postal voting for military personnel in units stationed abroad and 2) early postal voting at designated municipal premises for voters who are leaving the country a short time before election day.

Citizens who reside permanently abroad

All electoral laws provide that, in general, voters can vote only in the polling station on the electoral roll of which they have been entered. And, since citizens who reside permanently abroad are on the electoral rolls of voters abroad which are administered by the respective diplomatic missions and consular establishments (Arts. 27, 33(1) and 62 of the Law on Elections to the Seimas; Arts. 25, 31(1) and 52 of the Law on Presidential Elections; Arts. 35, 41(1) and 50(2) of the Law on Referendum), such citizens cannot cast votes even when they are in the country on an election day.

The exception to this general rule concerns the category of citizens who, despite being abroad, in accordance with legislation are regarded as residents (i.e. diplomatic and consular staff of the Republic of Lithuania and their family members, Lithuanian citizens serving in EU institutions or international organisations and their family members, as well as members of Lithuanian armed forces and related personnel deployed abroad (Art. 7(2) of the Law on Declaration of the Place of Residence)). They are entitled to the same legal status as citizen residents and are not subject to restrictions of voting rights imposed on non-resident citizens. Effectively, if they are in the country on election day they can vote in the polling stations where they have declared their last place of permanent residence. Furthermore, diplomatic and consular staff of the Republic of Lithuania and their family members, Lithuanian citizens serving in the EU institutions or international organisations and their family members, who are not subject to general restriction on holding an office incompatible with political activity, are entitled to run as candidates in all types of elections.

Practically, in the absence of electronic voting, for non-resident citizens who live very far away from the closest diplomatic mission or consular post (e.g. Australia that is covered by the Lithuanian Embassy in Japan) the exercise of their voting rights become scarcely possible given the difficulty in travelling to the polling station and the length of time necessary for effective postal communication.

²² Arts. 65(2) and 67 of the Law on Elections to Municipal Councils.

2.3. *Foreign residents:*

This section reports briefly on the electoral rights of foreign citizens, other than EU citizens (who are dealt with in section 3 below). In general third country nationals (nationals of non-EU countries permanently residing in Lithuania) are not entitled to participate in national elections or referendums.²³ However, they are generally enfranchised in municipal local elections, including local referenda.

Third country nationals (TCNs) can be defined as persons who permanently reside in Lithuania and have neither Lithuanian citizenship nor the citizenship of another EU Member State.

Apart from declaring their permanent place of residence in a municipality, the necessary requirement for the franchise of TCNs in local elections is to have a permanent residence permit²⁴ issued in accordance with Art. 53 of the Law on the Legal Status of Aliens²⁵ by a competent authority (i.e. the Migration Department under the Ministry of Interior). The usual precondition for issuing such a permit is for the applicant to have resided in Lithuania for the last five years while holding a temporary residence permit. TCNs permanently residing in a given municipality (or its settlement(s)), provided that they have a permanent residence permit, are entitled to vote in a local opinion poll by virtue of Art. 36(4) of the Law on Local Self-Government, which states that all residents who have the right to vote in the municipal elections may also take part in a local population opinion poll.

It should be also noted that there is one indirect impediment on TCNs' right to stand as candidates: only Lithuanian nationals can be members of political parties (Arts. 3 and 5(1) of the Law on Political Parties.)²⁶ Political parties are the most important and influential actors in the electoral process which can nominate candidates for electoral office. Although not only political parties can nominate candidates and they are entitled to nominate candidates who are not members, the inability of TCNs to be members of political parties prevents them from participating in elections on an equal footing. Besides, there are no possibilities, foreseen by the Law on Political Parties, to establish local political parties. This can be seen as another indirect impediment for the realisation of passive electoral rights of both citizen residents, citizens of other EU Member States and TCNs, permanently residing in Lithuania.

3. Electoral rights of EU citizens

This section describes the electoral rights regulated by EU law, and specifically the transposition into Lithuanian law of EU Council Directives 94/80/EC on local elections and

²³ These electoral rights (both to vote and to run as a candidate) in national elections and referendum are reserved solely for Lithuanian citizens. See: Arts. 9(3), 34(1), 55(1) and 78(2) of the Constitution; Art. 2(1 and 2) of the Law on Elections to the Seimas; Arts. 2(1) and 4(1) of the Law on Presidential Elections; Art. 2(2) of the Law on Referendum.

²⁴ This is a special document granting the right for a foreign citizen to live permanently in Lithuania. According to Art. 2(3) of the Law on Elections to Municipal Councils, a permanent resident of a particular municipality is *inter alia* defined as a third country national who is entitled to permanent residence in the Republic of Lithuania and holds the document confirming this right and who has declared his/her place of residence pursuant to legal acts of the Republic of Lithuania within the territory of that municipality or who is included by that municipality in the records of persons who do not have a place of residence.

²⁵ Version of 30 June 2012 (English version of 8 December 2011 available).

²⁶ Version of 18 May 2010 (English version of 18 May 2010 available).

93/109/EC on European Parliament elections. It deals with the electoral rights of EU citizens who reside permanently in Lithuania in European and local elections as well as the electoral rights of Lithuanian citizens residing abroad in European elections.

3.1. ***Local elections:***

The first steps towards transposing Directive 94/80/EC was in 2002 when Art. 119(2) of the Constitution was amended to enable EU citizens permanently residing in Lithuania to vote and to stand as candidates in municipal elections. As already mentioned, this amendment to the Constitution enfranchised not only EU citizens but also third country nationals permanently residing in Lithuania to participate in the municipal elections. After this constitutional amendment, corresponding amendments of the Law on Elections to Municipal Councils followed on 20 June 2002, which granted electoral rights to all permanent residents of municipalities including EU citizens and TCNs. Thus Directive 94/80/EC was implemented before the accession of the Republic of Lithuania to the European Union on 1 May 2004.

However, the initial transposition of Directive 94/80/EC into Lithuanian law had one derogation in not fully complying with Art. 3(b) of the Directive. Specifically, Art. 2(6) (later – Art. 2(3)) of the Law on Elections to Municipal Councils established that in order to vote EU citizens, like resident TCNs, must have a permanent residence permit²⁷ issued in accordance with the Law on the Legal Status of Aliens by a competent authority (i.e. the Migration Department under the Ministry of Interior). The usual precondition for such a permit to be issued is that the applicant has resided in Lithuania for the last five years while holding a temporary residence permit. In practice this meant EU citizens were granted electoral rights only after five years of residence in Lithuania. In addition to derogation from Directive 94/80/EC, such a national regulation was contrary to other EU fundamental principles, such as freedom of movement and the right of establishment for EU citizens within the EU, the realisation of which was also impeded by the requirement for EU nationals to hold a residence permits in Lithuania.

This requirement was lifted only recently, on 2 October 2012, by the amendment to the current Art. 2(3) of the Law on Elections to Municipal Councils. This amendment changed the definition of a permanent resident of a municipality by expressly including citizens of other EU Member States who have the right to reside in Lithuania and have declared their place of residence, pursuant to legal acts of the Republic of Lithuania, within the territory of that municipality or have been included by that municipality in the records of persons who do not have a place of residence. With this change the implementation of Directive 94/80/EC can be regarded as complete since the only condition for enfranchising EU citizens in local elections is the same as that for citizen residents, namely that they declare their place of permanent residence.

There was no relevant case law in domestic courts or the ECJ regarding the implementation of Directive 94/80/EC.

Concerning voter registration and voting procedures, there are no differences in legal regulations for citizen residents and EU citizens. However, one indirect impediment for the realisation of passive electoral rights of EU citizens permanently residing in the territory of

²⁷ According to the former Art. 2(6) of the Law on Elections to Municipal Councils, the definition of a permanent resident of a particular municipality *inter alia* included a person, who held a permanent residence permit and had declared his/her place of residence within the territory of that municipality, but did not specifically mention the EU citizens thus applying to them the same requirements as to TCNs.

the Republic of Lithuania can be noted. As mentioned already in discussing TCNs in 2.3.1, only Lithuanian nationals can be members of political parties (Arts. 3 and 5(1) of the Law on Political Parties). The inability of EU citizens to be members of political parties prevents them from participating in elections on an equal footing with citizen residents. Whether or not this kind of impediment is consistent with Art. 3(b) of Directive 94/80/EC is open for discussion.

3.2. EP elections for EU citizens residing in the country

The electoral procedures regulating the participation of EU citizens permanently residing in Lithuania in the EP elections are established by the Law on Elections to the European Parliament that was adopted on 20 November 2003 (i.e. before Lithuania's accession to the EU) in order to implement Directive 93/109/EC. As the definition of permanent residence was never included in the Law, it has not contained the express derogation from Directive (similar to that for municipal elections (described in section 3.1)), i.e. that EU citizens residing in Lithuania less than five years were not entitled to vote. However, in practice this restriction existed also for EP elections, as the EU citizens according to other laws were required to have a permanent residence permit. Under current legislation²⁸ this restriction is abolished. The only requirement for EU citizens to participate in EP elections is to have their place of permanent residence in Lithuania, which must be declared according to the same procedures applied to citizen residents.

Concerning voter registration and voting procedures, there are no differences in legal regulations for citizen residents and EU citizens. The specific details of how voter registration, voting and running as a candidate are regulated relates to the implementation of Art. 4 of Directive 93/109/EC which prohibits double voting and double candidacy. Art. 2(2 and 3) of the Law on Elections to the European Parliament provides for this prohibition by stating that it is allowed to vote or to stand as a candidate in elections only in one EU Member State.²⁹ Similarly, according to Art. 38(5) of the Law, a candidate can be struck off the list of candidates if it is determined that he/she does not comply with the requirements of Art. 3 (including the prohibition against standing as a candidate in more than one EU Member State).

3.3. EP elections for national citizens abroad

According to the Law on Elections to the European Parliament, the electoral rights of non-resident citizens are in essence identical with those in national elections and there are no specific procedures for exercising EP electoral rights from third countries.

The procedure for voter registration is the same for EP elections as for national elections. However, to avoid double voting, a non-resident citizen has to be removed from the

²⁸ Art. 3(1 and 4) of the Law on Elections to the European Parliament provides that an EU Citizen, having a permanent residence in Lithuania, is entitled to participate in the EP elections. According to Art. 4(1) of the Law on Declaration of the Place of Residence EU citizens have to declare their permanent residence in Lithuania provided they live there longer than 3 months in half a year.

²⁹ As provided by Art. 25(3) of the Law on Elections to the European Parliament, there are three specific grounds for removing EU citizens from the national electoral roll (and, by the same token, from a municipal and polling station roll as well): 1) loss of their Member State citizenship; 2) when a citizen of another EU Member State, permanently residing in Lithuania, refuses to declare that he would realise his voting right only in the Republic of Lithuania; or 3) if such a person has been deprived of his right to vote in his Member State of citizenship.

national electoral roll if he/she confirms that he/she will vote in another EU Member State, or, if there are reasonable grounds for believing that he/she will do so and refuses to confirm that he/she will vote only in the Republic of Lithuania (Art. 25(3) of the Law on Elections to the European Parliament). The voting methods available for non-resident citizens in EP elections are the same as in national elections³⁰: voting in diplomatic missions or consular establishments, ships and military units deployed abroad, or early postal voting in municipalities for those who are leaving the country temporarily shortly before election day (see 4.1.2 section below). As regards the registration and counting of votes of non-resident citizens cast from abroad, the mode of assimilated representation is applied just as it in national elections. Essentially, all non-resident citizens are registered in the capital city of Vilnius and vote for candidates in that constituency (Art. 32(1) of the Law on Elections to the European Parliament).

Regarding passive electoral rights, non-resident citizens are generally disenfranchised. In order to run as a candidate, a person has to meet the qualification of residing permanently in Lithuania 65 days before the elections.³¹

4. Exercising electoral rights

This section provides a brief analysis on the main aspects of exercising electoral rights, such as voter registration, voting, vote counting procedures and the procedure for running as a candidate in all types of elections, except for EP elections which was already dealt with in section three above). In all sub-sections, the default procedure for citizen residents is described followed by the procedures applied to non-resident citizens and foreign residents.

4.1. National elections

Voter registration

The electoral laws regulating national elections and referendums establish an identical voter registration procedure (also almost identical with that for European and municipal elections). According to this procedure, automatic registration of voters has to be applied; at the same time voters are entitled to request corrections of their data in electoral rolls or to enter their names therein when they are missing. The guiding principle of voter registration is that the procedure for drawing up electoral rolls must be such that every person who is eligible to vote is entered on the electoral rolls (Art. 25(3) of the Law on Elections to the Seimas; Art. 23(3) of the Law on Presidential Elections; Art. 33(2) of the Law on Referendum).

There are three types of electoral rolls: 1) national electoral roll; 2) municipal (city or regional) or single-member constituency (for the parliamentary elections) electoral rolls; and 3) polling stations district rolls. The detailed registration procedure in national elections and referendum is as follows³²: eligible voters are automatically included in electoral rolls according to the data contained in the population register or possessed by other authorities; voters are entitled to have access to their personal data in electoral registers and to request

³⁰ Arts. 65-1(3), 66, 67, 68 and 70 of the Law on Elections to the European Parliament.

³¹ In accordance with Art. 3(4) of the Law on Elections to the European Parliament, a citizen of the Republic of Lithuania is considered to be permanently residing in the Republic of Lithuania when he/she has declared their place of residence and the data relating to their place of residence in the Republic of Lithuania has been entered on the national population register prior to the date corresponding to 65 days before elections.

³² Arts. 25, 26, 28, 29, 32, 35 and 36 of the Law on Elections to the Seimas; Arts. 23, 24, 25, 26, 27, 30, 31, 32 and 33 of the Law on Presidential Elections; Arts. 33, 34, 35, 36, 37, 40, 43 and 44 of the Law on Referendum.

corrections; voters who are not included in the register are entitled to request that they be so included; municipal and single-member constituency rolls are drawn up from the national roll; while polling stations rolls are derived from the respective municipal or single-member constituency rolls.

Creating electoral rolls is a two step process. Initially the preliminary rolls are drawn up on the basis of data from the population register (as provided by the Migration Department under the Ministry of Interior). Following this, the final rolls are drawn up on the basis of corrections to the preliminary ones. Drawing up and updating the electoral rolls is the task of the Central Electoral Commission which is performed on the basis of information provided by state and municipal organs, electoral commissions as well as by the voters concerned and representatives of political parties. During the updating process voters can be transferred from one municipal or single-member constituency or polling station roll into another (e.g. in case their address has changed or because of mistakes), as well as removed from or entered on the national electoral roll. Final electoral rolls have to be approved not later than seven days before the elections or referendum. Final electoral rolls may be corrected only in exceptional cases (e.g. an additional polling station electoral roll has to be drawn up if at least two hours before the end of voting a voter who is not included in the regular electoral roll comes to the polling station to vote with a document certifying his/her declaration of place of residence within the territory of that polling station).

The registration procedure for non-resident citizens is almost the same as that for citizen residents. However, there are some slightly different technical details³³: eligible voters residing abroad are automatically included in electoral rolls; the rolls of citizens of the Republic of Lithuania residing abroad have to be drawn up in accordance with the national electoral roll and the information possessed by diplomatic missions and consular establishments; the preliminary rolls are drawn from the national roll according to the data contained in the population register about the respective citizens' departure and supplemented by the data contained in registers of diplomatic missions and consular establishments; the preliminary rolls must be delivered to those diplomatic missions and consular establishments which are responsible for updating the data and preparing the final rolls; a diplomatic mission or consular establishment has to submit to the Central Electoral Commission, at least fifteen days before the elections or a referendum, the completed electoral roll as well as a report about its updating. The mode of assimilated representation of non-resident citizens (the same as for the European elections) is applied: all non-resident citizens are registered in the constituency of Vilnius municipality and entered in its electoral roll for the presidential elections and national referendums or, for the parliamentary elections, to the electoral roll of the single-member constituency of the territory in which the Seimas of the Republic of Lithuania is situated (the Naujamiėsčio constituency No. 1 in Vilnius).

Casting the vote

For national elections and referendums, legislation regulating the methods for casting a vote is almost identical for both citizen residents and non-resident citizens.³⁴

³³ Arts. 25(3), 27 and 33 of the Law on Elections to the Seimas; Arts. 25, 27, 31 of the Law on Presidential Elections; Arts. 35 and 41 of the Law on Referendum.

³⁴ See: Arts. 62, 67, 67-1, 68, 69, 70, 71, 72 and 73 of the Law on Elections to the Seimas; Arts. 52, 57, 58, 59, 60, 61, 62, 63 and 64 of the Law on Presidential Elections; Arts. 50(2), 54, 55, 56, 57, 58, 59, 60 and 60-1 of the Law on Referendum.

As for the European and municipal elections, voting in the polling station where the voter is registered, by way of paper ballot, is the normal method of voting. As a rule, voting in polling stations located elsewhere in the national territory is not allowed. There is only one minor exception to this rule, applied in the parliamentary and municipal elections: a voter can vote in another polling station belonging to the same single-member constituency provided that he/she has not yet voted and if, by means of electronic communication (if available) between the polling station and the electronic electoral roll, this fact can be confirmed (Art. 35(2) of the Law on Elections to the Seimas).

Postal (absentee) voting is available for citizen residents as a matter of exception in designated locations, and only for citizen residents who cannot vote in their polling stations on election day for the following reasons: 1) in healthcare, social care or guardianship facilities – for voters who are under medical treatment or special care in these facilities and due to their health or age are not able to vote in their polling stations; 2) in military units stationed in Lithuania – for voters who perform mandatory military service and due to their service are not able to vote at their polling stations; 3) in penal institutions – for voters who are under arrest or serving a prison sentence; 4) at home – for disabled voters, voters with temporary working incapacity, and voters aged 70 and over, provided that due to their health they are unable to come to a polling station and have requested that they be allowed to vote at home; 5) at municipal premises – for voters who are unable to come to a polling station on an election day early voting has to be organised by a municipal (or single-mandate constituency) electoral commission on the Wednesday and Thursday preceding an election day in the premises of municipal institutions.

Non-resident citizens must cast their vote at diplomatic missions and consular establishments. They may do so either in person on election day or by post (early voting). In order to cast their ballot by post non-resident citizens must inform a diplomatic mission or consular establishment of their address. Then the voting documents for those voters can be at their request delivered by post and accepted by a voting commission set up by a diplomatic mission or consular establishment

Running as a candidate

As regards parliamentary elections, candidates (who must be citizen residents) can be nominated by political parties (both in single-mandate and multi-mandate constituencies), or any citizen resident can nominate themselves as a candidate in a single-mandate constituency provided that their candidature is supported by the signatures of no less than 1,000 voters of that constituency (Art. 37(1) of the Law on Elections to the Seimas). The requirements to run as a candidate in the parliamentary elections are already provided in section 2.1.

As for the presidential elections, candidates (who must be citizen who have resided in Lithuania for the past three years) may be nominated by political parties or they can nominate themselves. In both cases they have to generate support from 20,000 voters in the form of signatures in order to be registered as candidates.³⁵

It was mentioned already (see section 2.2.1) that to run as a candidate a person must meet the residential qualification both in the parliamentary and presidential elections. Therefore non-resident citizens are generally disenfranchised in this respect and no further comparison with the procedure applied to citizen residents is possible.

³⁵ Art. 79 of the Constitution; Arts. 35, 37 and 38 of the Law on Presidential Elections.

Besides, EU citizens and TCNs are not enfranchised in national elections and referendums. Thus they cannot run as candidates in national elections.

Mode of representation of citizens residing abroad

As mentioned already (see section 4.1.1), for the registration and counting of non-resident citizens' votes the mode of assimilated representation (the same as for European elections) is applied.³⁶ all non-resident citizens are registered in the constituency of Vilnius municipality and entered in its electoral roll for presidential elections and national referendums or, for the parliamentary elections, to the electoral roll of the single-member constituency of the territory in which the Seimas of the Republic of Lithuania is situated (the Naujamiėsčio constituency No. 1 in Vilnius). Therefore, although the external votes are counted separately, they are incorporated into the total Vilnius municipality or the Vilnius Naujamiėsčio single-member constituency No. 1 voting results.

4.2. Local elections:

Voter registration

There are three types of electoral rolls (registers): 1) national electoral roll; 2) municipal electoral rolls; and 3) polling station district rolls. The detailed voter registration procedure in municipal elections is as follows³⁷: eligible voters are automatically included in the electoral rolls according to the data contained in the population register or possessed by other authorities; voters are entitled to have access to their personal data in electoral registers and to request corrections; voters who are not included in the register are entitled to request that they be so included; municipal rolls are drawn up from the national roll, while polling station district rolls are derived from respective municipal rolls.

Creating electoral rolls is a two-step process. Initially the preliminary rolls are drawn up on the basis of data from the population register (as provided by the Migration Department under the Ministry of Interior). Following this, the final rolls are drawn up on the basis of revisions and corrections of the preliminary ones. Drawing up, updating and keeping of electoral rolls has to be organised by the Central Electoral Commission on the basis of the information provided by State and municipal organs, electoral commissions as well as by the voters concerned and representatives of political parties. During the updating process voters can be transferred from one municipal (constituency) or polling station district roll into another (e.g. in case their address has changed or because of mistakes), removed from or entered on the national electoral roll. Final electoral rolls have to be approved not later than seven days before the elections or referendum. Final electoral rolls may be corrected only on an exceptional basis (e.g. an additional polling station district electoral roll has to be drawn up if at least two hours before the end of voting a voter who is not included into the regular electoral roll comes to the polling station to vote with a document certifying his/her declaration of place of residence within the territory of that polling station district).

The same voter registration procedure applied to citizen residents (i.e. automatic registration on the basis of data from the population register) also holds for foreign residents (EU citizens and TCNs). There is only one specific ground for removal of TCNs from electoral roll: the revocation of a permanent residence permit (Art. 24(3.4) of the Law on

³⁶ Art. 33(1) of the Law on Elections to the Seimas; Art. 31(1) of the Law on Presidential Elections; Art. 41(1) of the Law on Referendum.

³⁷ Arts. 23, 24, 25, 26, 27, 30, 32 and 33 of the Law on Elections to Municipal Councils.

Elections to Municipal Councils). As noted (in section 3.1), this permit is an additional condition for enfranchising TCNs in the municipal elections.

Casting the vote

In local elections, the legislation regulating methods for casting the vote is similar but not identical to those regulating European and national elections. However, voting methods are identical for both citizen residents and other permanent residents.³⁸

As for European and national elections, voting in the polling station where the voter is registered, by way of paper ballot, is the normal method of voting. As a rule, voting in other polling stations anywhere in the national territory or anywhere in the same constituency is not allowed. There is only one minor exception to this rule, applied in the parliamentary and municipal elections: a voter can vote in another polling station belonging to the same single-member constituency provided that he/she has not yet voted and, by means of electronic communication (if available) between the polling station and the electronic electoral roll, this fact can be confirmed (Art. 32(2) of the Law on Elections to the Municipal Councils).

Postal (absentee) voting is available for citizen residents as a matter of exception in designated locations, and for the defined categories of citizen residents who cannot vote in their polling stations on an election day for various reasons. Indeed, the voting methods and legal regulation is identical to that for European and national elections. As regards the permanent residents of a municipality who are temporarily abroad on an election day, there are only two possibilities for them to cast votes (available also for citizen residents in the European and national elections): 1) postal voting in military units stationed abroad – for voters serving or working at these units (a commander of a respective military unit is responsible for the organisation of a postal voting); 2) early (postal) voting at municipalities – for voters who are unable to come to a polling station on an election day and leave the country shortly before that day. As mentioned, two other methods used in the European and national elections are not available in the municipal elections – personal voting at diplomatic missions and consular establishments and voting in ships.

As regards local referendums, it is only possible to vote at the location where the poll takes place. There are no methods of absentee voting for those who are not present at the place of voting on a voting day.

Running as a candidate

As municipal council elections are proportional, candidates can be nominated by political parties (Art. 34 of the Law on Elections to Municipal Councils) and other political electoral associations, including individuals uniting themselves for the purpose of taking part in the elections. The latter non-party associations have not yet been legislated, but are allowed under the 5 May 2011 Ruling of the Constitutional Court, according to which the monopoly of political parties to nominate candidates in the elections is contrary to the Constitution.

There are no other differences in requirements for running as a candidate in the municipal elections, except the very definition of permanent residence in a municipality as a general precondition to stand as a candidate. This definition is slightly different for citizen residents and EU citizens. For EU citizens the only condition that must be met is to be regarded as permanent resident of a municipality– they must declare their place of permanent

³⁸ See: Arts. 64, 65(1), 66, 67 and 68 of the Law on Elections to Municipal Councils.

residence within the territory of a respective municipality. However, for citizen residents, this condition is just an alternative to the more flexible requirement that they publicly declare their place of residence in a municipality (Art. 2(3) of the Law on Elections to Municipal Councils). TCNs must meet the additional condition to hold a permanent residence permit (Art. 2(3) of the Law on Elections to Municipal Councils). In practice, this means that TCNs may participate in municipal elections only when they have permanently resided in Lithuania for not less than five years (since a permanent residence permit may be issued only after five years of residence while holding a temporary residence permit.)³⁹

³⁹ See more in sections 2.3.1 and 3.1.

