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# EUDO CITIZENSHIP OBSERVATORY

## *ACCESS TO ELECTORAL RIGHTS*

### *ESTONIA*

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# Access to Electoral Rights

## Estonia

*Marja-Liisa Laatsit*

### 1. Introduction

The landscape of electoral rights in Estonia is strongly influenced by the country's large ethnic Russian minority. After the restoration of Estonia's independence in August 1991, a new electoral system was elaborated as part of the other comprehensive political and socio-economic reforms. The question of citizenship was the first to require close examination. Estonian citizenship was automatically granted to those who held Estonian citizenship prior to 16 June 1940 and their descendants. In August 1991, the mainly Russian-speaking immigrant population in Estonia amounted to about 400,000. The majority of these persons had entered Estonia during the Soviet occupation primarily in the 1970s and 1980s.

Following the restoration of independence, the non-native Estonian population who wished to remain in Estonia had essentially three options. They could either apply for the citizenship of Russia – the successor state of the USSR, choose another citizenship, e.g. Ukrainian or Belarusian, or become a citizen of Estonia through the process of naturalisation. The persons who decided to adopt a foreign country's citizenship could remain in Estonia on the basis of permanent residency. Those who opted for Estonian citizenship through naturalisation would become Estonian citizens with all associated rights and obligations. The citizenship status of the persons who chose not to apply for any citizenship remained undetermined. The Estonian Government issued to them identity documents, which also serve as travel documents – the so-called “grey passports”. The status of a person of undetermined citizenship entails visa-free entry to the Schengen zone as well as to the Russian Federation.

In January 2013, ethnic Estonians made up 898,845 of the entire population of 1,286,479 while the number of ethnic Russians is 324,431.<sup>1</sup> According to the 2011 census, the share of ethnic Estonians in the population was 69.7% whereas ethnic Russians accounted for 25.2% of the population. 85.1% of the permanent population were Estonian passport holders, 6.95% Russian citizens and the citizenship of 12.4% of the population was undetermined. In June 2013, the number of Estonian citizens amounted to 1,235,610 of whom 87,330 lived abroad.<sup>2</sup>

Debates on the requirements for the naturalisation process that were frequent in the 1990s are still ongoing today, with the language requirement being the most controversial.<sup>3</sup> The original question of citizenship and proficiency in the Estonian language has pierced the discussion on

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<sup>1</sup> Estonian Statistics Agency, [www.stat.ee](http://www.stat.ee).

<sup>2</sup> Ministry of the Interior, Population Register.

<sup>3</sup> See further: “Acquisition of Estonian citizenship”, available at: <http://estonia.eu/about-estonia/society/citizenship.html>.

electoral rights. The Local Government Council Election Act (LGCEA), adopted by the Estonian Parliament – *Riigikogu* – in 1996 included a provision providing the right to vote in local government council elections to all permanent residents in Estonia regardless of their nationality, and the right to run as a candidate to Estonian citizens. Those candidates running in local government council elections who had not obtained a secondary or higher level of education in the Estonian language were, however, required to take a supplementary Estonian language exam. President Lennart Meri refused to proclaim the Act arguing that the additional language test requirement was contrary to the Estonian Constitution and the UN International Covenant on Civil and Political Rights insofar as it created a pre-selection procedure for candidates who are Estonian citizens.<sup>4</sup> On 16 June 1996, the *Riigikogu* adopted the amended text of the LGCEA, which also amended the Language Act. In the amended LGCEA, references to the additional language test were omitted but oral and written competency of the Estonian language have remained a prerequisite for working at the *Riigikogu* and local government councils. This is in accordance with Article 52 of the Estonian Constitution which establishes Estonian as the official language of state agencies and local governments.

## 2. Eligibility

### 2.1. Citizen residents

#### Age

The age threshold for voting at *Riigikogu* and European Parliament (EP) elections and national referenda is eighteen years.<sup>5</sup> This age limit is also stipulated in Article 57 of the Constitution. In elections for the Local Government Council, the age threshold for both voting and running as a candidate is also eighteen years. For running as a candidate in *Riigikogu* and European Parliament elections, the candidate must have attained 21 years of age.

#### Mental disabilities

Generally, Estonian citizens whom the court has divested of active legal capacity do not have the right to vote pursuant to Article 57 of the Constitution. The divestment of one's active legal capacity can only happen upon a decision by a civil court to establish guardianship for managing all of the ward's affairs. Such persons are deemed to be without active legal capacity within the meaning of the right to vote and, thereby, have no right to vote or be elected.<sup>6</sup> Divesting a person of active legal capacity with regard to the right to vote has to be justified.

#### Persons convicted of criminal offences

<sup>4</sup> The decision of the President nr 715, RT (*Riigi Teataja*, State Gazette) I 1996, 31, 632.

<sup>5</sup> The three types of elections and the national referenda held in Estonia are regulated by the following legislative acts: Riigikogu Election Act, RT I 2002, 57, 355; Local Government Council Election Act, RT I 2002, 36, 220; European Parliament Election Act, RT I 2003, 4, 22; and the National Referendum Act, RT I 2002, 30, 176.

<sup>6</sup> Code of Civil Procedure, RT I 2005, 26, 97, Article 526(5).

Persons who have been convicted of a criminal offence by a court and are serving a prison sentence cannot participate in voting and may not stand as a candidate but they maintain their active legal capacity. If a person has been convicted of a criminal offence by a court and if, as of thirty days before election day, he or she is to be imprisoned until election day, he or she will not be entered in a polling list. Persons staying in custodial institutions but not sentenced by a criminal court to imprisonment, i.e. persons detained as suspects in a crime or in a misdemeanour procedure as well as persons held in custody prior to trial in criminal court can vote at the penal institution. There are no restrictions to their running as candidates. Moreover, persons who have convicted a criminal offence but have received a conditional sentence and have, therefore, not been imprisoned retain their right to participate in elections both as a voter and a candidate.

Already in 2006, following the *Hirst* judgment of the European Court of Human Rights (ECtHR),<sup>7</sup> the above limitation of convicted and imprisoned persons to participate in elections and national referenda was deemed unconstitutional by the Estonian Chancellor of Justice.<sup>8</sup> The Chancellor of Justice considered the restriction of voting rights of imprisoned persons to be in conflict with the principle of proportionality and the constitutional possibility of divesting detained persons of the possibility to vote. Subsequent case law of the ECtHR has confirmed the opinion of the Chancellor of Justice.<sup>9</sup> Yet, although the Chancellor of Justice has addressed the question to *Riigikogu* on numerous occasions this has not lead to an amendment of the law. In their argumentation, the counterparts point at the difficulty of conducting the elections at penal institutions, ensuring the right of imprisoned persons to receive sufficient information on the elections and meet the candidates.<sup>10</sup> Since elections do take place at custodial institutions, however, these justifications are objectively unfounded. Recently, the Constitutional Committee of the *Riigikogu* has resumed discussion on the issue.

## Persons in active service in the Defence Forces

Persons who are in active service in the Defence Forces may vote but not stand as candidates in Local Government Council or European Parliament elections. There are no restrictions for running as candidates in *Riigikogu* elections, though.

## 2.2. Citizens abroad

### Residence

All Estonian citizens regardless of their residence can vote in parliamentary elections and national referenda, and run as a candidate in *Riigikogu* elections. In Local Government Council elections, all voters and candidates have to be long-term residents in Estonia as proven by the registered address in the Estonian population register. Persons residing abroad,

<sup>7</sup> *Hirst v United Kingdom (No 2)* (2006) 42 EHRR 41, paras. 76-85. The Court considered the automatic restriction of the detainees' right to vote to be disproportional and contrary to the rights provided in Annex 1 Article 3 to the European Convention for Human Rights.

<sup>8</sup> Letter of the Chancellor of Justice of March 2006 No. 6- 8/051820/0601632, p 55; Annual report of the Chancellor of Justice 2006. Tallinn: Õiguskantsleri Kantselei, 2007, pp. 53-62. Available at: <https://www.riigiteataja.ee/akti/isa/0000/1286/6976/12874181.pdf>.

<sup>9</sup> E.g. *Greens and M.T. v UK* (2011) 53 EHRR 21; *Frodl v Austria* (2011) 52 EHRR 5; *Scoppola v Italy (No 3)* (2013) 56 EHRR 19.

<sup>10</sup> Letter of the Chancellor of Justice of 1 November 2005 No 6-1/051535/0506557; Letter of the Chancellor of Justice of March 2006 No 6-8/051820/0601632; "Põhiseaduskomisjon vaagis kinnipeetavaile valimisõiguse andmist", *Riigikogu* Press Release of 13.03.2006. Available at: <http://www.riigikogu.ee/index.php?id=38801>.

as long as they remain registered in the Estonian population register, can participate in the elections. In order to be able to cast a vote or run as a candidate, the voter's permanent residence must be registered with the corresponding municipality no later than on 1 August of the election year.

### **Citizen residents temporarily abroad**

Citizen residents who are temporarily abroad during the advance polls or on election day can vote in all elections. In parliamentary elections, national referenda and European Parliament elections, Estonian citizens who are permanently residing or temporarily staying in a foreign country can vote either directly at a representation or an honorary consulate of Estonia, by post, electronically, or on a ship flying the Estonian flag and located in international waters or the waters of a foreign country. In Local Government Council elections, registered Estonian residents who are permanently residing or temporarily staying in a foreign country can vote electronically.

### **In-country voting for citizens permanently residing abroad**

In parliamentary elections, national referenda and European Parliament elections, citizens who reside permanently abroad and have been entered in the list of voters permanently residing in a foreign state may, if they return to Estonia prior to the elections, vote in the advance polls in any polling division. They can also participate in electronic voting regardless of their location. Citizens who reside permanently abroad but continue to be registered as permanent residents in the Estonian population register can vote as all other permanent resident citizens in advance polls or on the day of the election.

In Local Government Council elections, persons registered as Estonian residents in the population register but who are permanently residing in a foreign country can participate in advance voting, vote in the polling district of residence on the day of the election, or cast their votes electronically. Citizens who reside abroad permanently and are no longer registered in the Estonian population register cannot vote at Local Government Council elections.

All Estonian citizens regardless of their registered residence may run as candidates in *Riigikogu* and European Parliament elections. In the latter, a person may, however, only run as a candidate in one European Union (EU) Member State. Citizens residing abroad on a permanent basis may run as candidates in Local Government Council elections as long as they are registered as permanent residents in the corresponding municipality by 1 August of the year of elections.

## ***2.3. Foreign residents***

### **General voting rights of third-country nationals**

Third-country nationals ('aliens' in Estonian legislative terminology<sup>11</sup>) have the right to vote in Local Government Council elections provided that they reside in Estonia on the basis of a long-term residence permit or the right of permanent residence but they cannot stand as candidates.

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<sup>11</sup> An alien is a person who is not a citizen of the Republic of Estonia or of a Member State of the European Union. The term is also applicable to persons of undetermined citizenship.

### 3. Electoral rights of EU citizens

#### ***3.1. Local elections***

94/80/EC has been fully implemented since Estonia joined the European Union on 1 May 2004. Citizens of the European Union can vote and stand as candidates in Local Government Council elections. In broad terms, the same conditions in terms of eligibility apply as to Estonian citizens. Additionally, a non-national EU citizen wishing to run as a candidate has to provide further data on his or her citizenship in the application form.

#### ***3.2. EP elections for EU citizens residing in the country***

Directive 93/109/EC on European Parliament elections was implemented in Estonia by the European Parliament Election Act (EPEA) already prior to Estonia's accession to the EU.<sup>12</sup> A non-national EU citizen has the right to vote in EP elections in Estonia on the following conditions: (1) he or she has attained eighteen years of age by the election day; (2) his or her residency in Estonia is registered with the Estonian population register; and (3) he or she has not been disenfranchised in his or her home Member State. Persons who have been divested of their active legal capacity with regard to the right to vote cannot do so. Furthermore, persons convicted of a criminal offence by a court and serving a prison sentence cannot participate in the voting. A non-national EU citizen has the right to stand as a candidate in EP elections on the same conditions except for that the candidate has to have attained 21 years of age by election day.

All non-national EU citizens who are registered as Estonian residents and are eligible to participate in the elections receive an information notice about their right to vote and to be entered in the polling list in Estonia no later than on the 70<sup>th</sup> day before the election takes place. A non-national EU citizen who is eligible and wishes to exercise his or her right to vote must appear on the polling list. For this, the person submits a request to be entered in a polling list to the chief processor of the population register at least 30 days before election day. In the application form, it must be stated that the voter wishes to exercise his or her right to vote in Estonia only and that he or she has not been deprived of a right to vote in his or her home Member State. As well as the voter, the administrative authorities of the person's home Member State are informed of the person being added to a polling list in Estonia. Provided that the non-national EU citizen person remains eligible to vote and has been registered as a permanent resident throughout the entire period between the two elections, there is no need to submit another application in the next EP elections.

A non-national EU citizen who wishes to stand as a candidate submits to the National Electoral Committee an application confirming his or her eligibility and that he or she is not standing as a candidate for EP elections in any other Member State. In the personal data form, the candidate inserts additional information on his or her citizenship and the local government or constituency in his or her home Member State in which he or she was last entered on the electoral register. Furthermore, the candidate must enclose an attestation form from the administrative authorities of his or her home Member State to prove that he or she has not been deprived of the right to stand as a candidate in that Member State. Similarly to the case of voters, the chief processor of the population register immediately notifies the

<sup>12</sup> RT I 2003, 4, 22, adopted 18.12.2002, entered into force 23.01.2003.



administrative authorities of the candidate's home Member State of the submission of the application.

### ***3.3. EP elections for national citizens abroad***

National citizens permanently residing or temporarily staying abroad can participate in the elections in the foreign country. Voting is organised by representations of Estonia or by honorary consulates where the honorary consul is an Estonian citizen and which have been designated by the Government of the Republic. The chief processor of the population register forwards the lists of voters permanently residing in a foreign state to the representations.

Similarly to national elections and referenda, voting can take place at an official representation or at a honorary consulate of Estonia, by post, electronically, or on a ship flying the Estonian flag and located in international waters or in the waters of foreign country. A voter who is permanently residing in a foreign country, is entered on the list of voters permanently residing abroad and has not yet voted abroad may also vote in Estonia in advance polls in any polling division.

## **4. Exercising electoral rights**

Only Estonian citizens regardless of their registered residence have electoral rights in *Riigikogu* elections and national referenda. At Local Government Council elections, citizen residents, citizens temporarily staying abroad, EU citizen residents, third-country national residents and residents of undetermined citizenship have the right to vote. The right to stand as a candidate in these Local Government Elections belongs to all of the above except for third-country nationals and persons of undetermined citizenship.

### ***4.1. Voter registration***

In order to exercise his or her right to vote, a person has to appear in the polling list, which is created on the basis of the data in the population register. A person is automatically registered in the population register on the following occasions: (1) at the entry of the person's birth certificate if the person obtains Estonian citizenship by birth; (2) upon receiving Estonian citizenship; (3) when a foreign national or person of undetermined citizenship has been issued a residence permit or granted right of residence. In order to register one's address in the population register, a person submits a written notice of residence to the local government agency. Estonian citizens permanently residing abroad submit data on their residence to a representation from where it is forwarded to the population register. The form of notice of residence can also be submitted digitally.

Only dwellings can be registered as places of residence. In case of persons who continuously stay on the territory of a municipality and who are subjects of the population register but are not entered in the population register, or persons who inhabit a space that is not a dwelling, such as homeless persons, the local government agency can initiate the entry or amendment of the address of the residence in the population register on the basis of data provided by a social welfare institution, medical institution, rescue service agency or police authority. If a person's address is not known, the person's location will be entered in the population register.

to the accuracy of the municipality and city district or rural municipality district and settlement unit, if possible.

A person whose address has been entered in the population register and who is eligible to vote appears automatically on the polling list. Voters receive polling cards at least 20 days before the election day or referendum.

The same registration procedure as for Estonian citizens also applies to the citizens of the EU, the European Economic Area and the Swiss Confederation, and for foreign nationals and persons of undetermined citizenship residing in Estonia on the basis of a residence permit or a right of residence.

Non-national EU citizens who are eligible to participate in the elections receive a notification of their right to vote and stand as a candidate as well as information about the elections at least 70 days before the election day.

#### **4.2. Casting the vote**

##### **Polling station in the district where the voter is registered**

Voting in a polling division is held at a polling place designated by the rural municipality or city government. On the election day, voting takes place between 9 a.m. and 8 p.m.

A ballot paper is given to the voter upon presentation of an identity document and signing the polling list. The ballot paper must be filled out in the voting booth personally by the voter. In the event of a physical disability, which prevents the voter from filling out the ballot paper personally, another voter who is not a candidate in the election district of the voter's residence may complete the ballot paper at the voter's request and in his or her presence. As a general rule, proxy voting is not allowed. The ballot paper must be deposited in the ballot box personally by the voter.

##### **Polling station anywhere in the national territory**

Polling divisions are open for voters voting outside of their polling division of residence for advance voting from the 13<sup>th</sup> until the ninth, and the sixth until the fourth day before the election day. It is possible to vote from 12 a.m. until 8 p.m. The voting procedure is the same as in the case of voting at one's polling station of residence except for that the voter receives a ballot paper and two envelopes. The ballot paper is inserted in the internal (smaller) envelope, which is then placed in the outer (bigger) envelope. The voter deposits the envelope in the ballot box designated for voting outside one's polling division residence.

##### **Absentee voting through mail ballot**

If the address of a voter permanently residing in a foreign state or a voter temporarily staying there is known, the representation will send him or her a polling card by post or electronic mail at least 85 days before election day or 50 days before a national referendum.

In order to vote by post, the voter sends an application and a copy of an identity document to the Estonian representation in his or her country of habitual residence or, in the absence thereof, to the nearest representation at least 30 days prior to the election day. If the voter has not been entered into the list of voters permanently residing in a foreign country, the voter must indicate his or her last residence in Estonia or, if the voter has not resided in Estonia, the last residence of his or her parents or grandparents in Estonia.

On the basis of the application the voter receives a ballot paper, two envelopes and, in the case of *Riigikogu* and EP elections, a consolidated list of candidates in the electoral district indicated by the voter. A person staying abroad temporarily adds to the outer envelope his or her address in Estonia. Thereafter, the voter sends the ballot paper to the representation which forwards all ballots to Estonia by the fourth day before the election day at the latest. The voter bears the expenses of sending the ballot paper to the representation.

### **Voting at representation**

Voters who reside permanently or stay temporarily in a foreign country and did not vote by post can vote at an Estonian representation abroad. The representations enable voting on at least two days in the period between 15 and 10 days before the election day.

The voter receives the ballot paper upon presentation of a valid identity document and a signature on the list of voters. The voter receives a ballot paper and two envelopes. If the voter is staying abroad temporarily, he or she must also have written on the outer envelope his or her address as registered in the Estonian population register as of 30 days before the election day.

### **E-voting**

Electronic voting at *Riigikogu* elections and national referenda takes place on the webpage of the National Electoral Committee from 9 a.m. on the 6th day to 8 p.m. on the fourth day before the election day on a twenty-four hour basis. During Local Government Council elections and European Parliament elections, the time for electronic voting is extended to the period between the tenth and the fourth day before the elections. In order to ensure that the voter is expressing his or her true will the voter is allowed to change his or her electronic vote at any time electronically or by voting at the polling station during advance polls. The electronic vote given last will be counted; if the voter has voted both electronically and by paper ballot, the latter vote will be counted. To that end, all polling stations are informed of the e-voters on their polling lists after the end of advance polls and before the election day.

### **Voting on a ship**

If a ship flying the Estonian flag has voters on board and is located in international waters or the waters of a foreign state on advance polling days or election day, voting may be held on board the ship. For this, the master of the ship submits an application to the National Electoral Committee and organises the voting on board according to rules identical to those applying to voting at advance polling outside the polling division of residence.

### **Voting at home**

If a person is not able to vote at a polling place due to health or other significant reasons, he or she may apply to vote at home. For this, a written application must be submitted to the municipality or division committee of his or her residence by four p.m. on the election day. Home voting is held by at least two members of the division committee, who are not affiliated with the same political party.

### **Voting in custodial institutions**

Persons who are detained in a custodial institution but have not been convicted of a criminal offence by a court may participate in voting that is held in advance of the polls in the custodial institution.

#### **4.3. Running as candidate**

In order to run as a candidate at *Riigikogu* or local government elections, the eligible candidate must submit an application to stand as a candidate and provide a personal data form. In this application, the potential candidate expresses his or her desire to stand as a candidate in the list of a political party or election coalition or to stand as an independent candidate. An enfranchised person may also nominate another person as an independent candidate and perform the acts necessary for registration provided that he or she has been duly authorised to by the candidate.

In the Local Government Council elections, a prerequisite for standing as a candidate is that the candidate's permanent residence be registered in the respective municipality not later than on 1 August of the election year.

#### **4.4. Assimilated representation of citizens residing abroad**

The system of "assimilated representation" is in place for voters permanently residing abroad. Foreign residents' votes are included in the votes of the electoral district determined by the voter's former place of residence in Estonia or, in the absence thereof, by the place of residence of the voter's parents or grandparents.

#### **Relevant legislative acts**

- Constitution of the Republic of Estonia, RT I 1992, 26, 349.
- Riigikogu Election Act, RT I 2002, 57, 355.
- National Referendum Act, RT I 2002, 30, 176.
- Local Government Council Election Act, RT I 2002, 36, 220.
- European Parliament Election Act, RT I 2003, 4, 22.
- European Union Citizen Act, RT I 2006, 26, 191.
- Population Register Act, RT I 2000, 50, 317.
- Code of Civil Procedure, RT I 2005, 26, 97.

