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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**COMMENTS ON THE LAW ON ELECTIONS TO LOCAL GOVERNMENT
COUNCILS OF THE REPUBLIC OF LITHUANIA**

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Comments on the Law on Elections to Local Government Councils
of the Republic of Lithuania

Ergun ÜZBUDUN

The Law on Elections to Local Government Councils, dated 31 May 1994, provides the legal framework for the election of members of local government Councils. The first chapter of the law introduces the universally accepted preconditions for free, honest, and democratic elections, such as the universal and equal suffrage; direct, personal, and secret ballot. The electoral system chosen is proportional representation. Article 67 makes it clear that the system in question is the "highest remainder" version of proportional representation, which is a system that benefits smaller parties. However, the same article establishes a 4 percent threshold at the electoral area level for representation in the Councils. This is a useful provision that will prevent the excessive fragmentation of the party system.

Consistent with the proportional representation system, the country is divided into multi-member electoral areas. The number of council members to be elected in each electoral area varies with the population of the area, as established in Article 8. For the purpose of organizing the elections, electoral areas are subdivided into electoral districts. No more than 5.000 voters may reside in the territory of an electoral district (Art.9).

The fairness or honesty of elections (i.e., the degree to which elections reflect the true will of the electorate) depends in large part on the mechanisms designed for the conduct and supervision of elections. The less the influence of political, especially executive, authorities in this area, the greater the prospects for conducting fair and honest elections. The Lithuanian Law has designed a three-tiers mechanism for this purpose. At the top is the Central Electoral Committee, and the two other tiers consist of the electoral committees of electoral areas, and the electoral committees of electoral districts. The law contains no provisions on the composition of the Central Electoral Committee; presumably, it has been regulated elsewhere.

However, the composition of electoral committees of electoral areas and electoral committees of electoral districts has been regulated in the law. Electoral committees of electoral areas shall consist of two lawyers nominated by the Ministry of Justice, two lawyers nominated by the Lithuanian Society of Lawyers, and two representatives of each political party or political organization which presented a list of candidates in the electoral area. It is not clear whether the word "list" (Art. 12, para.6) refers to the list of candidates nominated in the preceding Seimas elections, or to the list of candidates nominated in the current local elections. Also, there seems to be a contradiction between the first paragraph of Article 12 which states that the chairpersons of the electoral committees of electoral areas shall be appointed by the Central Electoral Committee and the paragraph 7 of the same article which states that the chairpersons are elected by electoral committees of electoral areas. Electoral committees of electoral districts are similarly composed of representatives of political parties (Art. 14). The same ambiguity referred to above concerning which parties have the right to nominate representatives for the committees is also present in this article. So is the apparent contradiction between the first and the last paragraphs of the same article as to the election of committee chairpersons.

In any case, the method by which electoral area and electoral district electoral committees are formed seems to be capable of ensuring the fair conduct of elections. These committees do not seem to be subject to the undue influence of executive authorities. Also reassuring is the fact that appeals are possible against decisions of the Central Electoral Committee to the Supreme Court of Lithuania (Arts. 17, no.3 and 71).

As for the more technical provisions of the law, they seem to provide a mechanism that will ensure the smooth running of the electoral process. Particularly commendable are those provisions permitting mail voting and voting in the ships.

Comments on the Law on Elections to Local Government Councils
of the Republic of Lithuania
by Mr Timothy Sexton

System of election

The notable feature of the electoral system is the impersonality of the system and the restricted choice available to the individual elector.

The entire membership of each council (ranging from 21 to 51 members) will be elected from one multi-member electoral area by means of a party list system. Registered political parties may present lists of candidates. Parties may combine to present a list. A minimum of 5 candidates must be nominated in each list. Apparently, "political organisations" may also present lists but it is not clear what they are or how they differ from political parties. It is not clear whether local parties may be registered - viz parties organised to contest local elections only or in part only of the country.

The order of the candidates on each list is pre-determined by the party presenting the list and electoral mandates are awarded to candidates in this order. The elector may vote for one list only. He cannot alter the order of names on the list or express a preference as between the different candidates on the list. There is no provision for independent candidates.

As an arrangement for the election of representatives at local government level, the system appears impersonal and not calculated to develop close relationship between electors and their local elected representatives.

The identification of elected representatives with specific local communities is an important aspect of democratic local government and this element could be enhanced by, for example:

- dividing each local government unit into a number of electoral areas (constituencies), each electing, perhaps, 5 or 10 members;
- allowing independent candidates to contest the elections;
- enabling the elector to express a preference as between the individual candidates on the list of his choice.

Term of office

A two year term of office appears very short and provides little time for policies to be developed, implemented and produce results. Holding nationwide local elections, literally, every second year could have a de-stabilising effect on the

administration. A more usual term of office would be three, four or five years.

Electoral threshold

From the democratic viewpoint specifying a minimum threshold for participation in the distribution of seats is undesirable and should be avoided, if possible. The same objective could be achieved more effectively and in a less objectionable way by dividing the local government unit into a number of electoral areas, each electing, perhaps 5 or 10 members. In a 5-member electoral area approximately 20% of the valid vote would be necessary in order to win a seat.

Detailed observations

Many of the following observations are in the form of questions designed to clarify the position and in some instances arise from drafting and translation difficulties.

Article 2. The current tendency is to relate the right to vote at local elections to residence rather than citizenship. For example, the Treaty on European Union gives each citizen of the European Union the right to vote at local elections in the Member State in which he resides. Perhaps permanent residents who may not be citizens of Lithuania should be given the local government vote.

In paragraph 1 it is assumed that the reference to "incapable" means incapable by reason of mental infirmity.

Paragraph 4 seeks to limit the exercise of the dual mandate at local and national level. It may need clarification to cover, for example, the situation where an outgoing member of the Seimas is re-elected.

Paragraph 5 (disqualification on grounds of imprisonment) requires clarification. The intention appears to be to disqualify a person who is actually serving a sentence of imprisonment imposed by a court or who is unlawfully at large following such a sentence. A minimum period of imprisonment (say, 1 year, 3 years or 5 years) should be specified. A very brief sentence for a minor infringement ought not disqualify. It is intended to cover only sentences imposed by a court in Lithuania? It should be clarified also whether the disqualification relates to the time of nomination or polling day.

Should membership of a local government council be declared incompatible with holding senior office in the national administration or in the local executive body? This aspect may

be dealt with in the law relating to conditions of employment in such offices.

Article 3. "Vote of equal value" can only apply within each local government unit - on some councils each member will represent 1,000 people, in others 10,000.

Article 5. Prohibition relating to "control the will of voters" - is this an offence to which Article 37 applies?

Article 7. It is more usual to have the cost of local government elections borne by the local authorities rather than the State.

Article 8. How and by whom are the boundaries of local government units determined?

As indicated above, division of local government units into a number of electoral areas would enhance the sense of local community and make the elections more truly local. Appropriate arrangements would be required for drawing up and revising such areas.

Article 9. The purpose of electoral districts is to provide convenient voting units. Thus, distance from the polling station and availability of transport could be as important as the total population/electorate.

What enquiries and consultation take place in drawing up and revising the electoral districts?

Chapter III. In Ireland we do not have the concept of electoral committees. Elections in each electoral area (constituency) are conducted in accordance with the electoral law by a returning officer, an independent, impartial official. He engages the necessary personnel to carry out election duties, including the conduct of the poll in polling stations. All significant procedures at elections are supervised by representatives on behalf of the political parties and candidates. Returning officers and the personnel engaged by them are responsible to the courts for the conduct of elections. Our experience has been that this is an effective and relatively inexpensive method of conducting elections.

Article 11. The composition and formation of the Central Electoral Committee is not dealt with. Presumably this is a permanent body established under parliamentary elections law?

Article 21. The lists of voters are compiled by the executive bodies of the relevant local governments. Are the lists compiled

by reference to a standing register of residents or on the basis of local enquiries? The accuracy of the original draft list is critical for the accuracy of the final document.

Article 25. The Central Electoral Committee is required to check that every voter is registered on one voters' list only. This would seem to be a very onerous task and it is not clear how it could be done in the time available.

Is the time allowed for considering "commentaries" and appeals regarding the voters' lists sufficient, particularly if matters of fact are involved which may require on the spot enquiry?

Chapter V. The main concerns in relation to candidature are the absence of provision for the participation of independent candidates and the fact that the order of candidates on the list is determined entirely by the party, thus restricting the choice available to the individual elector.

Article 31. The list of candidates must be accompanied by a document proving that each candidate is a citizen of Lithuania. To prevent misunderstanding, it would be desirable that the acceptable documents should be specified.

Article 32. Who decides on the name to be assigned to a joint list of candidates? May parties join in different combinations to present joint lists in different electoral areas?

Article 36. It would be desirable to specify the nature of the assistance to be provided by local government authorities.

Article 38. The extent of the inviolability of candidates during the election campaign needs clarification. Should a candidate not be amenable to the law, in the normal way, in respect of any offence, including electoral offence, committed by him in the course of the campaign?

Article 41. Free broadcasting time on national radio and television must be allocated on "the principle of equality of political parties" and each political party must be allocated equal time on local government radio and television programmes.

Should factors such as the number of electoral areas contested by each political party, the number of candidates nominated by the party and, perhaps, its proven electoral support, be taken into account in allocating broadcasting time on radio and television?

The apparent prohibition on publication of material which discredits a candidate in the ten days before the election could be seen as interference with the freedom of the press and new media.

Which electoral committee will be competent to settle disputes related to election campaigning?

Article 42. Should officers of the State and local government institutions (particularly senior officers) be prohibited from being candidates?

Article 43. It is not clear how the maximum sum allowed for campaigning and the assistance provided from State funds are calculated. It would seem appropriate that the number of electoral areas contested by each party and the number of candidates presented by it should be taken into account.

What detail must be provided in the published reports concerning the sources of funds and must the accounts be audited by professional auditors?

Article 46. It appears that the Central Electoral Committee will be responsible for printing all ballot papers. It would seem more convenient to have the ballot papers for each electoral area printed locally under the supervision of the electoral area committee.

Chapter IX. Voting at polling places is tightly controlled. The elector must be on the voters' list, must present a voter certificate and evidence of identity and must sign the voters list. The entire procedure is supervised by election observers. On the other hand, voting by mail, home voting by disabled persons and voting by patients in hospitals seem to be conducted by post office officials without supervision.

Article 49. Presumably the actions prohibited within 50 metres of the polling place are campaigning activities, not the ordinary business of persons who may live or work within that radius.

Article 51. The acceptable identity documents should be specified. The necessity for the voter's signature on the list is not clear - the same objective could be achieved by placing a mark on the list to denote that a ballot paper has been issued to the voter. Provision should be made for voters who are unable to sign their names.

Article 52. Candidates and persons actively involved in the campaign should not be permitted to assist voters who are physically unable to mark their ballot papers.

Article 53. As indicated, this article appears to give a substantial and unsupervised role to the post office.

The list of home voters is drawn up on the basis of data provided by social care and assistance institutions. Will these institutions be aware of every person who is physically unable to attend the polling stations? Should there be facility for individual disabled persons to apply for entry on the home voters' list?

Article 61. If the district electoral committee decide that the ballot box has been tampered with, the votes shall not be tallied. What action is then taken and by whom.

Article 63. Ballot papers bearing no stamp are deemed invalid. I cannot find a specific requirement that ballot papers should be stamped at the time of issue.

Article 67. See comment regarding electoral threshold.

English translation. In a number of instances, there are incorrect references to electoral committees, for example, in articles 64 and 72.

In two instances (articles 17 and 71) it is stated that the decision of the Supreme Court shall be final. Is such a statement necessary - presumably the decision of the Supreme Court is final in all cases.