



**Organization for Security and Co-operation in Europe  
Office for Democratic Institutions and Human Rights**

**Information Submitted to the  
Office of the United Nations High Commissioner for Human  
Rights  
as a Stakeholder in the  
Universal Periodic Review of Lithuania**

**Warsaw, 15 July 2021**



**OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner  
for Co-operation under Consideration in the Universal Periodic Review Process**

## Participating State: Lithuania

UPR Working Group Session and Date of Review: 40<sup>th</sup> Session, January/February

### Background

1. Lithuania has been a participating State in Organization for Security and Co-operation in Europe (OSCE) since 1991 and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.<sup>1</sup>
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Lithuania, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, rule of law, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE-Area.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Lithuania and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Lithuania.

### Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE participating State, an OSCE field operation or another OSCE institution, the OSCE/ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards.<sup>2</sup> In 2016-2021, the following legal opinions (on topics other than elections) were issued on legislation or draft legislation of Lithuania:

*Opinion on Draft Amendments to the Law on Funding of and Control of Funding of Political Campaigns of Lithuania*<sup>3</sup> and *Opinion on Certain Provisions of the Law on Funding and*

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<sup>1</sup> OSCE Office for Democratic Institutions and Human Rights, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, <http://www.osce.org/odihr/elections/76894> and *Compendium of OSCE Human Dimension Commitments: Volume 2, Chronological Compilation (third edition)*, 2011, <http://www.osce.org/odihr/76895>; OSCE Summit Meeting, Astana 2010, *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010, <http://www.osce.org/cio/74985?download=true>

<sup>2</sup> The legal reviews and opinions, often produced in co-operation with the Council of Europe’s Commission for Democracy through Law (Venice Commission), are available at [www.legislationline.org](http://www.legislationline.org). Basic information about the constitutional system and human dimension-related legislation of Hungary is also available in English on [www.legislationline.org](http://www.legislationline.org).

<sup>3</sup> *Opinion on Draft Amendments to the Law on Funding of and Control of Funding of Political Campaigns of Lithuania* 13 November 2018

### *Control of Funding of Political Campaigns of Lithuania*<sup>4</sup>

5. The Central Election Commission (CEC) of the Republic of Lithuania requested two opinions on draft amendments to and certain provisions of the Law on Funding of and Control of Funding of Political Campaigns of Lithuania on 20 July 2018 and 17 September 2018. The Draft Amendments sought to introduce several changes, focusing on the role and authority of the CEC in relation to supervising the donations and expenditures of political campaign financing.
6. The Law of the Republic of Lithuania on Financing and Control of Financing of Political Campaigns was amended in 28 November 2019 and some ODIHR recommendations were included, but concerns remain in relation to lack of oversight over third party expenditures, as well as due to the vague definition of political advertising which leaves space for arbitrary decisions and has the potential to result in infringements on free expression.<sup>5</sup>
7. The law on party and campaign finance does not explicitly prohibit third parties to campaign for or against a candidate as long as they are not formally connected to electoral contestants or co-ordinate campaign. However, third party expenditures could potentially be considered as expenses incurred by the contestant. Therefore, OSCE/ODIHR recommended:
  - To review the legislation with respect to the third-party expenditures by acknowledging such expenses as well as introducing accountability of such costs.
8. According to draft Article 22.5 of the Law, the CEC, after the beginning of each political campaign, has a right to apply to the Radio and Television Commission of Lithuania, the Public Information Ethics Commission, and the Office of the Inspector of Journalist Ethics regarding the assessment of the content of disseminated information or to request these bodies to delegate representatives to the working group set up by the CEC. This appears to be a measure for assessing the language of the political advertisement. However, as noted in the ODIHR observation report on the 2016 parliamentary elections in the Republic of Lithuania<sup>6</sup> “the vague definition of political advertising leaves space for arbitrary decisions and has the potential to result in infringements on free expression.” ODIHR recommendations in this regard were not implemented. It was recommended:
  - To avoid provisions in the Law that could lead to censorship of political advertisement and possibly undermine the right to freedom of expression.

### **Election-related activities**

9. ODIHR has observed five elections in the country, most recently the 11 and 25 October 2020 parliamentary elections. ODIHR deployed an Election Expert Team (EET) for these elections.

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<sup>4</sup> Opinion on Certain Provisions of the Law on Funding and Control of Funding of political Campaigns of Lithuania, 28 September 2018

<sup>5</sup> ODIHR observation report on the 2016 parliamentary elections in the Republic of Lithuania, 31 January 2017, p. 15

<sup>6</sup> ODIHR observation report on the 2016 parliamentary elections in the Republic of Lithuania, 31 January 2017, p. 15

*Parliamentary elections, 11 and 25 October 2020*

10. Following an invitation from the authorities of the Republic of Lithuania and based on the findings and conclusions of a Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET) for the 11 October 2020 parliamentary elections that remained in the country to follow the second round on 25 October 2020. The ODIHR EET assessed the implementation of the amended legal framework, with focus on the performance of election management bodies, oversight of the campaign and campaign finance, as well as the alternative voting methods and the use of new voting technologies.
11. The ODIHR EET Final Report on the 11 and 25 October 2020 Parliamentary Elections<sup>7</sup> concluded that “while the legal framework enjoys public trust, it contains undue restrictions on candidacy rights and some broad provisions that may unduly restrict the freedoms of expression and association. Following the 2016 parliamentary elections, multiple amendments were made to a number of election-related laws. Changes included the establishment of a constituency for voters abroad, remote electronic voting for voters abroad and in self-isolation due to COVID-19, a reserve of election commission members, and modifications of provisions on candidate registration, voter list management, postal and out-of-country voting. Some prior ODIHR recommendations were partly addressed including disallowing amendments to the election law after the call of elections, establishing a deadline for filing certain types of complaints and introducing provisions for citizen observers.
12. Several ODIHR prior recommendations remain unaddressed, including:
  - To ensure the integrity of elections, voter registration on Election Day by the Precinct Election Commissions and voting outside the single-mandate constituencies of residence should be permissible as an exception and under strict conditions.

Complaints regarding campaign and campaign finance issues need not be dealt within nine months after a complaint has been filed, which a long time. It was thus recommended:

  - To introduce expedited deadlines for the Central Election Commission (CEC) to adjudicate complaints within a reasonable time.
13. Contrary to OSCE commitments, international good practice and prior ODIHR recommendations, the law does not provide for effective challenge of the CEC decision on election results.<sup>8</sup> OSCE/ODIHR thus recommended:

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<sup>7</sup> ODIHR Election Expert Team Final Report on the 11 and 25 October 2020 Parliamentary Elections, 8 February 2021

<sup>8</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document states that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. Paragraph II.3.3 f. of the Code of Good Practice (Venice Commission) provides that “all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections”

- To ensure effective legal redress, judicial review of the validity of election results should be guaranteed by law. The law could prescribe the right of stakeholders to challenge the CEC decision on election results with a competent court.
14. To be registered as a political party it is required to submit a list of minimum 2,000 founding members and an individual may be a member of only one party. The law grants the Ministry of Justice broad powers to refuse registration or deregister a party, including when it considers the information submitted by a party as “unrealistic”, while applying for registration. OSCE/ODIHR noted the lack of clear and objective criteria on party registration which may lead to arbitrary and inconsistent implementation and recommended revising the provisions/ ODIHR thus recommended:
- To revise any restrictions on fundamental rights and freedoms, including freedoms of expression and association, or on candidacy rights so they be based on objective and reasonable criteria, be proportionate and necessary in a democratic society and should serve a legitimate aim.
15. In its Final report on the 11 and 25 October 2020 parliamentary elections ODIHR, within its mandate, offered 14 recommendations, including 4 priority ones:<sup>9</sup>
- Any restrictions on fundamental rights and freedoms, including freedoms of expression and association, or on candidacy rights should be based on objective and reasonable criteria, be proportionate and necessary in a democratic society and should serve a legitimate aim;
  - To safeguard the stability of law, fundamental amendments of the electoral system, including regarding the membership of commissions, should not take place within a year prior to the elections; and
  - To safeguard the integrity of the electronic vote count, the law could be amended to prescribe means for a recount that are independent of the vote counting software and are based on a randomly selected and statistically meaningful percentage of votes or a number of polling stations.
  - To ensure effective legal redress, judicial review of the validity of election results should be guaranteed by law. The law could prescribe the right of stakeholders to challenge the CEC decision on election results with a competent court.

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<sup>9</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.