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## Lithuanian Electoral Code: General Observations and Main Changes in Financing of Political Campaigns\*

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The Electoral Code of the Republic of Lithuania consolidates electoral laws into a unified framework of a constitutional law, seeking to enhance clarity and transparency in electoral processes. Its preparation took almost 13 years and was not easy at all. Key innovations include stricter regulations on political donations, transparency measures, and mandatory disclosure of financial agreements. While the code in some ways marks progress, challenges persist, such as non-regulation of third-party participation and an over-reliance on prohibitions, raising concerns about alignment with international standards.

In this article, the author highlights the key characteristics of the code from a constitutional perspective and examines its strengths and challenges in regulating election campaign financing, while offering ideas for future improvements.

**Keywords:** Lithuanian election law, electoral code, political organisation, election campaign, financing, third-party participation, Central Electoral Commission.

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## Introduction

The preparation and adoption of the draft Electoral Code in Lithuania followed a rather long and challenging path. On the other hand, this should not be particularly surprising, as drafting and adopting any code tends to require significant time due to the specific nature of regulatory legal acts of this kind. In this case, there was also a very pronounced political dimension, which made finding compromises on certain issues exceptionally difficult, not to mention that the Code was adopted as a constitutional law, the adoption of which requires a qualified majority of votes in the Seimas of the Republic of Lithuania<sup>1</sup>, thus demanding political consolidation<sup>2</sup>.

The Electoral Code of the Republic of Lithuania<sup>3</sup>, adopted on 19 July<sup>4</sup> 2022, came into effect on 1 September 2022. It took almost 13 years for the Code to materialise. Six different types of laws – the Law on Elections to the *Seimas* of the Republic of Lithuania<sup>5</sup>, the Law on Presidential Elections of the Republic of Lithuania<sup>6</sup>, the Law on Elections to the European Parliament of the Republic of Lithuania<sup>7</sup>, the Law on Elections to Municipal Councils of the Republic of Lithuania<sup>8</sup>, the Law on the Financing and Financial Control of Political Campaigns of the Republic of

<sup>1</sup> See the Article 69 of the Constitution of the Republic of Lithuania (25.10.1992). Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/079fcad0cf8711ecb69ea7b9ba9d787b?jfwid=b454lz9dz> [last viewed 12.04.2025].

<sup>2</sup> See more: Šinkūnas, H. Teisė.Pro. Rinkimų kodeksas: Kas, ką, kada ir kaip? [Electoral Code: Who, What, When, and How?]. 23 September 2022. Available: <https://www.teise.pro/index.php/2022/09/23/h-sinkunas-rinkimu-kodeksas-kas-ka-kada-ir-kaip/> [last viewed 12.04.2025].

<sup>3</sup> Lietuvos Respublikos rinkimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo konstitucinis įstatymas (19.07.2022) [Constitutional Law on the Adoption, Entry into Force, and Implementation of the Electoral Code of the Republic of Lithuania]. Available: <https://www.e-tar.lt/portal/lt/legalAct/418f26f0082b11edb4cae1b158f98ea5> [last viewed 12.04.2025]. **Note.** Unless otherwise specified, this article analyses the original version of the Electoral Code and the version of other legal acts as of 1 September 2002.

<sup>4</sup> After President's veto.

<sup>5</sup> Lietuvos Respublikos Seimo rinkimų įstatymas (09.07.1992). Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.06267D86738E> [last viewed 12.04.2025].

<sup>6</sup> Lietuvos Respublikos Prezidento rinkimų įstatymas (22.12.1992). Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.E39827DBDE34> [last viewed 12.04.2025].

<sup>7</sup> Lietuvos Respublikos rinkimų į Europos Parlamentą įstatymas (20.11.2003). Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.FE3C428580B8> [last viewed 12.04.2025].

<sup>8</sup> Lietuvos Respublikos savivaldybių tarybų rinkimų įstatymas (07.07.1994). Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.336A4B109EBC> [last viewed 12.04.2025].

Lithuania<sup>9</sup> (hereinafter – the Law on the Financing), and the Law on the Central Electoral Commission of the Republic of Lithuania<sup>10</sup> – were codified into a single legal act.

It is not clear, whether this is a coincidence, or if the legislature indirectly intended to symbolically mark this date as a new beginning.<sup>11</sup> Even if it is purely coincidental, the Electoral Code indeed represents the start of a new tradition in regulating electoral law in Lithuania.<sup>12</sup> Not only is it a codified legal act, but it is also a constitutional law.

The adoption of the Electoral Code in Lithuania represents a landmark moment in the evolution of electoral governance, unifying all electoral laws into a single, cohesive framework. This development aims to address longstanding challenges related to transparency, accountability, and equity in the electoral process. However, while the Electoral Code introduces significant innovations, such as enhanced financial disclosure requirements and stricter controls on political donations, it also raises questions about its practical implications and alignment with democratic principles such as equality, transparency, and accountability.

Despite the fact that more than three years have passed since the Lithuanian Electoral Code came into force, it is important to note that its issues have been scarcely studied,<sup>13</sup> and the matters raised in the current paper have been analysed only by the author of this article.

This study delves into the key provisions of the Electoral Code, including its approach to political advertising, third-party involvement, regulation of campaign finances, and the legal status of the Central Electoral Commission. It critically evaluates the balance between prohibition and regulation, highlighting areas where the Code's provisions may fall short of international standards or constitutional norms. By situating Lithuania's reforms within a broader regional and international context, the article offers insights into the successes and shortcomings of the Lithuanian Electoral Code and explores pathways for further strengthening its contribution to democratic governance.

The author of this article employs a combination of legal, historic, comparative, and analytical research methods to examine the provisions and implications of the Lithuanian Electoral Code. The analysis is grounded in a comprehensive review of the Code's text, supplemented by interpretations of relevant national constitutional and administrative case law, jurisprudence of the European Court of Human Rights, legal and policy documents, and academic literature.

<sup>9</sup> Lietuvos Respublikos politinių kampanijų finansavimo ir finansavimo kontrolės įstatymas (23.08.2004). Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.CF812DA6E814> [last viewed 12.04.2025].

<sup>10</sup> Lietuvos Respublikos vyriausiosios rinkimų komisijos įstatymas (20.06.2002). Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.AF228880894E> [last viewed 12.04.2025].

<sup>11</sup> In Lithuania, the new academic year begins on September 1<sup>st</sup>, which is recognized as the commemorative “Day of Science and Knowledge”. See the Article 1(2(64)) of the Law on Commemorative Days of the Republic of Lithuania [Lietuvos Respublikos atmintinų dienų įstatymas] (03.07.1997). Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D570962773F8> [last viewed 12.04.2025].

<sup>12</sup> It should be noted that electoral codes are not very popular, either in Europe or globally. See more: Global Citizenship Observatory, National Electoral Laws Database. Available: <https://globalcit.eu/national-electoral-laws/> [last viewed 12.04.2025].

<sup>13</sup> *Matjošaitytė, L.* Rinkimų teisės pokyčiai 2023 metais [Changes in Electoral Law in 2023]. In: Lietuvos teisė 2023: esminiai pokyčiai [Lithuanian Law 2023: Main Changes]. Available: <https://cris.mruni.eu/server/api/core/bitstreams/28109aab-c830-40c1-b8cc-037aedf2af39/content> [last viewed 14.04.2025] <https://doi.org/10.13165/LT-23-01-01>.

## 1. A few general insights about the Electoral Code itself

The fact that all the “rules of the game” for elections can now be found in one place, and that they have been unified as much as possible for all elections, is undoubtedly a significant advantage. This is something that, first and foremost, should be appreciated by participants of electoral political campaigns. Previously, some participants sometimes found it difficult to navigate the different election laws and their requirements. This was especially true in cases where election laws regulated certain issues in similar but not identical ways. The result of this was more frequent violations of election laws. Therefore, it can be preliminarily stated that the Electoral Code will serve, albeit not in a classical sense, as a kind of preventive tool against election law violations.

Nevertheless, the matter of codifying electoral laws should have been addressed differently. This refers to the two-tier legal regulation established in the constitutional law and ordinary law. In this regard, this opinion is not unique, as there have been others who share this view. For instance, in September 2021, a group of Members of *Seimas* drafted and registered a proposal for the Constitutional Law on the List of Constitutional Laws<sup>14</sup>. Among other things, this proposal suggested amending the list of constitutional laws by removing the Constitutional Law on the Approval, Entry into Force, and Implementation of the Electoral Code and replacing it with the Constitutional Law on the Fundamentals of Elections.

During the presentation of this draft constitutional law in the session of *Seimas*, it was particularly emphasized that the Electoral Code would contain numerous highly detailed procedural provisions. In practice, if it became evident that some of these provisions were flawed, it would pose a significant problem, as constitutional laws can only be amended with a majority of at least 3/5 of all Members of *Seimas*, meaning at least 85 votes from 141 (Article 69(3) of the Constitution). The *Seimas* did not support this idea. After its presentation, the draft constitutional law was not approved and was returned to the initiators for revision.<sup>15</sup> The initiators ultimately abandoned this proposal altogether.

It is very unfortunate, as the detailed legal regulation established in the Electoral Code was programmed to definitely cause practical problems.<sup>16</sup> Naturally, this was to be expected, as in a legal act of such scope, something is always overlooked

<sup>14</sup> Lietuvos Respublikos konstitucinių įstatymų sąrašo konstitucinio įstatymo projektas Nr. XIVP-817 (10.09.2021) [Draft Constitutional Law of the Republic of Lithuania on the List of Constitutional Laws No. XIVP-817]. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/6edf9420120711ecad9fbbf5f006237b?positionInSearchResults=2&searchModelUUID=5cbd1990-94e8-497a-9a21-a75c362a7b4b> [last viewed 14.04.2025].

<sup>15</sup> III (rudens) sesijos 2021 m. gruodžio 9 d. vakarinio posėdžio Nr. 123 stenograma [Transcript of the evening session No. 123 of the III (autumn) session on 9 December 2021]. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/80c1ffc059ab11ecacfd54306d0ca27> [last viewed 14.04.2025].

<sup>16</sup> For example, the Article 76(4) of the original version of the Electoral Code stipulated that **a candidate’s biography provides information** about their place of birth, **nationality**, education, knowledge of foreign languages, workplace, public activities, hobbies, and marital status. On October 10, 2023, this provision was amended and now states as follows: **The candidate in their biography must provide information** about their **date** and place of birth, education, knowledge of foreign languages, workplace, **work experience**, public activities, hobbies, and marital status. See more: Lietuvos Respublikos rinkimų kodekso 32, 64, 69, 76, 78, 79, 80, 81, 85, 87, 88, 89, 93, 97, 100, 110, 114, 125, 138, 163, 181, 185 ir 193 straipsnių pakeitimo konstitucinis įstatymas Nr. XIV-2185 (10.10.2023) [Constitutional Law No. XIV-2185 on the Amendment of Articles 32, 64, 69, 76, 78, 79, 80, 81, 85, 87, 88, 89, 93, 97, 100, 110, 114, 125, 138, 163, 181, 185, and 193 of the Electoral Code of the Republic of Lithuania]. Available: <https://www.e-tar.lt/portal/lt/legalAct/7a0f33c0733d11eea5a28c81c82193a8> [last viewed 14.04.2025].

and (or) not considered. Indeed, why does the Code stipulate such details as, for example, the requirement that the bottom of a voter signature collection sheet must include the name and surname of the person collecting the signatures, the number of their passport, ID card, or document confirming the right to reside permanently in the Republic of Lithuania, their residential address, signature, and the date of the signature (Article 79(4) of the Electoral Code), regulating these in a legal act of constitutional law level? Does such provision truly require greater stability than what can be ensured by ordinary legislation? Apparently not.

Moreover, the Constitutional Court has noted that, although the Lithuanian Constitution does not explicitly establish the criteria that the Seimas should follow when including specific constitutional laws in the list of constitutional laws, it can be inferred from the provisions of the Constitution, which establish a more complex procedure for adopting and amending constitutional laws, that constitutional laws should regulate constitutionally significant areas of social relations and particularly important issues of state and societal life.<sup>17</sup>

The draft of the Constitutional Law on the Fundamentals of Elections was not prepared, making it difficult to determine what exactly the initiators of the draft Constitutional Law on the List of Constitutional Laws meant by the term “fundamentals”. If the author of this publication was to answer how she envisions it, she would first identify the constitutional principles of elections<sup>18</sup> and the provisions of the Code of Good Practice in Electoral Matters<sup>19</sup> approved by the European Commission for Democracy through Law (also known as the Venice Commission), despite the fact that this code technically is merely advisory in nature.<sup>20</sup>

It is entirely unclear why the Electoral Code includes provisions regulating the legal status, tasks, powers, principles of operation, as well as the composition, organizational procedures, and funding of the Central Electoral Commission as well. The explanatory notes<sup>21</sup> accompanying the draft versions of the Electoral Code provide no answer to this question. The Central Electoral Commission is expressly identified in the Constitution as a permanent institution. This alone justifies the need

<sup>17</sup> Ruling of the Constitutional Court of the Republic of Lithuania of July 2020 in case No. 5/2019. Available (EN): <https://lrkt.lt/en/court-acts/search/170/ta2220/content> (last viewed 14.04.2025).

<sup>18</sup> The Lithuanian Constitution enshrines more electoral law principles than those explicitly mentioned in its text, namely: universal, equal, direct suffrage, and secret ballot. The Constitutional Court's rulings additionally emphasize principles such as free and democratic elections, transparency, fairness in the electoral process, fair competition in elections, and justice. See more: *Pukanasytė, I.* Rinkimų teisės principai Konstitucinio Teismo jurisprudencijoje [Principles of Electoral Law in the Jurisprudence of the Constitutional Court]. *Socialinių mokslų studijos: mokslo darbai*, Vol. 5, issue 1, 2013, p. 218.

<sup>19</sup> Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report. No. CDL-AD(2002), 30 October 2002. Available: <https://rm.coe.int/090000168092af01> [last viewed 14.04.2025].

<sup>20</sup> Nevertheless, since 2007, the European Court of Human Rights has treated the electoral law principles enshrined in the Code of Good Practice in Electoral Matters and their interpretation as a standard for resolving cases under its jurisdiction. Deviations from the principles outlined in this Code could lead to violations of the provisions of the European Convention on Human Rights or, conversely, help demonstrate that no violation of the Convention occurred. See more: *Miliuvienė, J.* “Soft law” įtaka konstitucinės jurisprudencijos raidai [The Influence of Soft Law on the Development of Constitutional Jurisprudence]. Doctoral dissertation. Vilnius: Mykolo Romerio universitetas, 2020, pp. 92–93.

<sup>21</sup> Lietuvos Respublikos rinkimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo konstitucinio įstatymo projekto Nr. XIVP-1279 aiškinamasis raštas (11.01.2022) [Explanatory Note for the Draft Constitutional Law of the Republic of Lithuania on the Approval, Entry into Force, and Implementation of the Electoral Code No. XIVP-1279]. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/6d3672b072d811ecb2fe9975f8a9e52e?jfwid=u9s5ag0yo> [last viewed 14.04.2025]; Lietuvos Respublikos rinkimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo konstitucinio įstatymo projekto Nr. XIVP-1279(2) aiškinamasis raštas (02.03.2022) [Explanatory Note for the Draft Constitutional Law of the Republic

for a separate law defining its status, not to mention that the provisions of the Law on Central Electoral Commission, which were “mechanically” incorporated<sup>22</sup> into the Electoral Code, are of a completely different nature in terms of their subject matter and purpose. The Legal Department of the Office of the *Seimas* of the Republic of Lithuania highlighted this issue,<sup>23</sup> but, unfortunately, its comments on this specific matter were not taken into account.<sup>24</sup>

## 2. Ten changes and one missed opportunity: Electoral code provisions on financing of political campaigns compared to the previously applicable legal framework

The rules on the financing of political campaigns, particularly the requirement for transparency, are established, among other reasons, to ensure that the general public transforms into a well-informed public. Well-informed public makes decisions only after assessing the available information. This necessity is grounded in the concept of democracy as a system based on the rational choices of a well-informed electorate.<sup>25</sup>

It would be wise to start by addressing the changes in the legal regulation of donations, which are indeed quite significant. Let us begin with a new definition of the term “donation” as outlined in the Electoral Code: a donation is money transferred free of charge to a participant of an electoral political campaign or non-monetary benefits provided in the form specified in the Article 109(1) of this Code, intended for an electoral political campaign (Electoral Code, Article 107(1)). Markedly, the definition is quite concise, not overloaded with details, and has a clear structure. I.e., it is immediately apparent that donations can be of two types: monetary and non-monetary. For clarity, these types of donations are distinguished within the Electoral Code itself (Article 107(2)).

The Electoral Code also provides a definition of the term “non-monetary donation”. A non-monetary donation is defined as movable or immovable property,

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of Lithuania on the Approval, Entry into Force, and Implementation of the Electoral Code No. XIVP-1279(2). Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/d53129d09a2111ec9e62f960e3ee1cb6?jfwid=u9s5ag0yo> [last viewed 14.04.2025].

<sup>22</sup> Lietuvos Respublikos Seimo kanceliarijos Teisės departamento 2022 m. vasario 22 d. išvada Nr. XIVP-1279 „Dėl Lietuvos Respublikos rinkimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo konstitucinio įstatymo projekto“ [Opinion No. XIVP-1279 of the Legal Department of the Office of the *Seimas* of 22 February 2022 “Regarding the Draft Constitutional Law on the Approval, Entry into Force, and Implementation of the Electoral Code of the Republic of Lithuania”]. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/7af7650093b511ec9e62f960e3ee1cb6?jfwid=u9s5ag0yo> [last viewed 14.04.2025]; Seimo kanceliarijos Teisės departamento 2022 m. kovo 8 d. išvada Nr. XIVP-1279(2) „Dėl Lietuvos Respublikos rinkimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo konstitucinio įstatymo projekto“ [Opinion No. XIVP-1279(2) of the Legal Department of the Office of the *Seimas* of 8 March 2022 “Regarding the Draft Constitutional Law on the Approval, Entry into Force, and Implementation of the Electoral Code of the Republic of Lithuania”]. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/b3de39a09ed911ec9e62f960e3ee1cb6?jfwid=u9s5ag0yo> [last viewed 14.04.2025].

<sup>23</sup> Ibid.

<sup>24</sup> Researchers studying the legal status of the Central Electoral Commission after the Electoral Code came into effect have not highlighted this issue either. See more: *Pyrzyńska, A., Malužinas, M.* Pozycja prawna Centralnej Komisji Wyborczej Republiki Litewskiej [Legal Position of the Central Electoral Commission of the Republic of Lithuania]. *Przegląd Sejmowy*, Vol. 179, issue 6, 2025, pp. 85–107. <https://doi.org/10.31268/PS.2023.220>.

<sup>25</sup> *Pludowski, T.* Komunikacja polityczna w amerykańskich kampaniach wyborczych [Political Communication in American Election Campaigns]. Warszawa: Wydawnictwo Naukowe PWN, 2008, pp. 127–130.

information, property rights, intellectual property, or other material or non-material values transferred free of charge to an independent participant, as well as free-of-charge actions, volunteer work, or the results of actions, provided that the acquisition costs of these items or services are considered electoral political campaign expenses under this Code (Article 109(1)).

The Law on the Financing did not contain anything similar. That is, although the term “non-monetary donation” was used, it was not defined in the law, and the general definition of “donation” provided in it was cumbersome, confusing, and misleading, as well as clearly lacking systematic coherence. This, naturally, often led to problems in practice, as recipients of donations and electoral commissions interpreted and understood the term differently, leading to inconsistencies in its application.

It is also highly commendable that the Electoral Code explicitly and clearly states that voluntary work is considered a non-monetary donation (Article 109(6)). This was not the case in the Law on the Financing, where voluntary work was included in the general concept of “donation”, which, as noted above, was vague.

One of the most notable examples in this regard is the political campaign 2019 of President Gitanas Nausėda. During his campaign, or for its benefit, certain individuals allegedly provided specific services, calling it “voluntary support”<sup>26</sup> for the candidate. Paulius Tamulionis, a shareholder and director of the communications agency “Idea prima”, contributed to Gitanas Nausėda’s presidential campaign, providing consultations and other public relations-related services. Paulius Tamulionis stated that he did part of the work voluntarily, without accepting payment, but acknowledged that the usual cost of such campaign services could reach up to €100 000. This was not reflected in the list of individuals who donated to the candidate or in the candidate’s financial accountability documents. However, the Central Electoral Commission, after gathering preliminary information, decided that it was insufficient to initiate an investigation into this case. To reduce the likelihood of such instances recurring, the Electoral Code includes an additional safeguard – a requirement to record voluntary work in the financial accounting register, specifying what work was performed, by whom, to what extent, and when (Article 113(4)).

From the perspective of transparency and openness, one of the positive changes worth highlighting is the prohibition of cash donations established in the Electoral Code. Monetary donations can only be made via bank transfer or electronic payment methods that allow the donor’s identity to be verified (Article 112(4)). While such legal regulation may cause practical difficulties for some donors, the greater value lies in the fact that this new regulation should significantly limit the financing of election campaigns through third parties, a practice currently characterized by high levels of opacity. But, of course, it would be overly naïve to claim that this prohibition would fully resolve the issue.

It is also commendable that the Electoral Code has increased the maximum amount for small donations, particularly by defining it not as a specific fixed sum but as a percentage (3%) of one of the variable economic indicators – the Average Monthly Gross Salary (AMGS) – applied in elections (Article 108(1)). This approach allows for a relatively swift response to changing economic conditions without requiring excessive amendments to the relevant legislation. The Electoral Code stipulates that

<sup>26</sup> See more: *Davidonytė, B., Pancerovas, D.* 15min. Gitanui Nausėdai prezidentu tapti padėjo ir nematomas rėmėjas [An Invisible Supporter also Helped Gitanas Nausėda Become President]. 23 November 2020. Available: <https://www.15min.lt/naujiena/aktualu/lietuva/gitanui-nausedai-prezidentu-tapti-padejo-ir-nematomas-remejas-56-1410592> [last viewed 14.04.2025].

the AMGS applied in elections is equal to the AMGS of the national economy for the third quarter of the previous calendar year, rounded to the nearest whole number. According to data provided on the Official Statistics Portal, the AMGS for the last quarter of the previous year was €2335,9 gross<sup>27</sup>. Thus, the current maximum amount for a small donation would be €70. In contrast, under the Law on the Financing, the maximum amount for a small donation was set as €12, a limit established back on 1 January 2015.

Unlike the requirements set out in the Law on the Financing, the Electoral Code eliminates the requirement for an individual donating more than a small donation to declare not only their income but also their assets in accordance with the law before making the donation to the recipient. This requirement was often excessive, as there is no practical need to declare assets if the declared income is sufficient to justify the donated amount. On the other hand, although such cases might be rare, it is conceivable that an individual may not have any income but possesses significant assets, including financial resources. In such cases, the corresponding provision of the Electoral Code could be considered overly restrictive. This nuance should not be overlooked.

Another novelty is related to the inclusion of membership fees paid to a political party in the maximum amount that a single individual may donate in a calendar year (Electoral Code, Article 110(5)). The emergence of such legal regulation has a practical basis. For instance, there have been cases, where a married couple not only paid the maximum allowable political party membership fees but also made additional donations of the maximum allowable amount to the same political party. However, this regulation should be considered questionable, and the reasons for this will be explained in greater detail.

Firstly, political party membership fees and donations to independent participants are different sources of funding for different entities. Secondly, it is difficult to understand why individuals who are members of political parties are being discriminated against compared to those who are not members of political parties, especially since the Law on Political Organizations of the Republic of Lithuania<sup>28</sup> sets maximum limits for political party membership fees (Article 19(4)). Reducing these limits could be one option to address this issue. And, finally, the corresponding provisions of the Electoral Code are not aligned with the Law on Political Organizations in that, under the Electoral Code – which is a constitutional law – only the membership fees paid to political parties are included in the maximum donation amount, excluding political organizations, which can also be funded through membership fees.

A different perspective applies to the provision in the Electoral Code, which states that donations made by an individual to other independent participants and membership fees paid to a political party are included in the total donation a candidate in a single-member electoral constituency or a referendum initiator can receive for their political campaign financing within a calendar year (Article 110(6)), provided

<sup>27</sup> Oficialiosios statistikos portalas. Šalies ūkio darbuotojų vidutinis mėnesinis darbo užmokestis ir vidutinė valstybinio socialinio draudimo senatvės pensija [Official Statistics Portal. Average Monthly Wages of the Country's Workforce and the Average State Social Insurance Old-Age Pension]. Available: <https://osp.stat.gov.lt/covid19-statistika/covid19-itaka-darbo-rinkai/darbo-uzmokestis> [last viewed 14.04.2025].

<sup>28</sup> Lietuvos Respublikos politinių organizacijų įstatymas (15.09.2022) [Law on Political Organizations of the Republic of Lithuania]. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a81b677034fa11edbf47f0036855e731/asr> [last viewed 14.04.2025].

that membership fees paid to a political party are excluded from this provision. Moreover, it is also unclear why the aforementioned provision of the Electoral Code is applied to donations made by referendum initiators to finance their referendum political campaign.

And here is the provision of the Electoral Code stating that the amount of donations allowed to finance a candidate's election campaign in a single-member constituency includes the sum of debts incurred during the election campaign and expenses paid before the start of this campaign (Article 110(3)), which deserves thunderous applause. For a long time, a solution could not be found to combat the detrimental practice where a candidate donates the maximum allowable amount to their election campaign and incurs an equivalent or even greater amount in debts<sup>29</sup>. This essentially meant that candidates, using such a scheme, could easily bypass the established maximum spending limit for political election campaigns several times over. Furthermore, there have been instances when, after the election campaign ended, some candidates' campaign debts simply disappeared or were repaid with funds from unclear sources.

The Electoral Code specifies the same source of funding for the election campaigns of representative participants – the funds of the independent participants who nominated them. However, using conditional donations as an example (this is an assumption), it is additionally stipulated that, if the donor specifies which representative participant the donation is intended for, this donation cannot be used to finance the election campaigns of other participants (independent or representative) (Article 105). This creates conditions for emphasizing (materializing) the donor's political preferences. It somewhat resembles a voter's ability to give preferential votes to candidates they favour more on a shared candidate list. The difference is that the act of donating to a specific representative participant does not protect the "secrecy of voting". Quite the opposite, treasurers are required to publish this information on the website of the Central Electoral Commission, including who donated, when, how much, and to whom.

It is also worth mentioning that, compared to the Law on the Financing, the content of financing transparency has been significantly improved in the Electoral Code. It is particularly gratifying that now, not only election campaign financing agreements are made public on the Central Electoral Commission's website, but also the agreements concluded by independent participants with service providers and advertising producers (Article 124(2)). Of course, this will be done in strict compliance with personal data protection requirements.

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<sup>29</sup> To be fair, it should be mentioned that an interim solution to this issue was found and could have been applied since 1 January 2020. This was established by the Law on the Financing: Article 18. Debts of Political Campaign Participants and Their Settlement.

1. A political party is entitled to settle its debts only from the sources of funding specified in the Law on Political Parties of the Republic of Lithuania, while other participants in a political campaign may settle their debts only from their own (personal) funds.
2. Debts incurred by political campaign participants during the political campaign period must be settled before the commencement of the next political campaign for the corresponding elections. In cases where a former independent political campaign participant fails to settle debts by the specified deadline, upon their registration as an independent participant in the next political campaign, the maximum allowable amount of political campaign expenses for that participant shall be reduced by 25 percent by the decision of the Central Electoral Commission.
3. A former independent political campaign participant who has settled their debts must notify the Central Electoral Commission of the settlement and the sources of funds used for it within 5 working days.

Now, let us delve deeper into election campaign financing expenses, specifically focusing on political advertising. Let us begin by noting that the Electoral Code provides a clarified definition of the term “advertising”, explicitly distinguishing between types of political advertising, namely positive and negative political advertising (Article 95(1)). It should be noted that, in this regard, the legislator has not introduced anything new. It has merely formalized the practice established by the Central Electoral Commission and upheld by the courts,<sup>30</sup> whereby certain information is considered political advertising and is further classified as positive or negative depending on the intention behind its dissemination – that is, the intended direction of influence of the political advertisement. This direction can also be non-individualized, such as aiming to influence election results.

Notably, compared to the Law on the Financing, the Electoral Code places an emphasis on paid political advertising. To prevent a variety of interpretations of this concept, the definition of paid political advertising is also provided. Paid political advertising is defined as political advertising that is prepared, produced, and (or) disseminated for payment, or for which financial resources are used, engaging individuals who typically provide such services for remuneration (Article 95(2)).

Insofar as it pertains to the ordering of paid political advertising for election campaign purposes and its corresponding payment, the Electoral Code establishes stricter regulations—this can only be done by the participant of the election campaign themselves (Article 95(3)). It would not be incorrect to assume that this legislative reaction was prompted by the public campaigns against political party “Lietuvos lenkų rinkimų akcija-Krikščioniškų šeimų sąjunga”<sup>31</sup> (hereinafter – LLRA-KŠS) and its leader Valdemaras Tomaševskis<sup>32</sup> organized in 2020 by the journalist and public activist Andrius Tapinas and Laisvės TV, such as the publications “Viso gero, Voldemortai”<sup>33</sup> (“Goodbye, Voldemort!”) and “Viso gero, Valdemarai?”<sup>34</sup> (“Goodbye, Valdemar?”). In these publications, people were urged to participate more actively in the elections to prevent LLRA-KŠS from entering the *Seimas*. If they could not choose a suitable candidate, voters were advised to spoil their ballots. The publications also introduced the party’s candidates for the *Seimas*, presenting negative information about them, and included critical statements from Lithuanian Poles about LLRA-KŠS.

Here should be elaborated further on the earlier remark about a missed opportunity. Instead of regulating the participation of third parties in election campaigns by defining their funding sources, declaration and labelling obligations, and potential

<sup>30</sup> See, for example, decision of the Supreme Administrative Court of Lithuania of 3 May 2023 in case No. eA-574-662-2023 or decision of the Supreme Administrative Court of Lithuania of 30 March 2022 in case No. eA-183-502/2022.

<sup>31</sup> Lithuanian Poles’ Electoral Action – Christian Families Alliance.

<sup>32</sup> Waldemar Tomaszewski.

<sup>33</sup> See more: *Skerytė, J.* LRT. Tapino ir Tomaševskio kovoje dedamas taškas: VRK šurkščių pažeidimų nenustatė [Full Stop in Tapinas and Tomaševskis’ Dispute: The Central Electoral Commission Found No Serious Violations]. 31 October 2020. Available: <https://www.lrt.lt/naujienos/lietuvoje/2/1266826/tapino-ir-tomasevskio-kovoje-dedamas-taskas-vrk-siurksciu-pazeidimu-nenustate> [last viewed 14.04.2025].

<sup>34</sup> A publication of similar content. See its content: Laisvės TV, diskusinis leidinys “Viso gero, Valdemarai?” [“Goodbye, Valdemar?”]. 30 September 2020. Available: [https://issuu.com/laisves\\_tv/docs/viso\\_gero\\_valdemarai\\_laikrastis\\_a2\\_570x400mm](https://issuu.com/laisves_tv/docs/viso_gero_valdemarai_laikrastis_a2_570x400mm) [last viewed 14.04.2025].

spending limits – as repeatedly proposed by the Central Electoral Commission<sup>35</sup> and the Lithuanian branch of Transparency International<sup>36</sup> – the legislator chose a different path: to prohibit it. Although such a prohibition is not explicitly stated in the Electoral Code, the provision allowing only the participants of election campaigns to order and pay for paid political advertising effectively amounts to the same thing. It is regrettable that Lithuania did not follow the example of other countries, such as neighbouring Latvia, and instead of regulating these social relations, chose to ignore them through a prohibition.<sup>37</sup> Moreover, the chosen approach clearly does not align with the case law of the European Court of Human Rights on this matter.

The European Court of Human Rights has repeatedly emphasized that the values protected by the Convention for the Protection of Human Rights and Fundamental Freedoms can be safeguarded not only through prohibitions but also by establishing an effective control mechanism.<sup>38</sup> The Court has also ruled that it is impermissible to prohibit entities that are not formally participants in an election campaign from taking part in such campaigns, as this would restrict their freedom of expression. At the same time, it has stressed the need to strike a balance – specifically, by regulating and controlling the participation of such entities in election campaigns.<sup>39</sup> Finally, such decisions contribute neither to the strengthening of civil society nor to an increase in public trust in political parties. Moreover, it can be assessed that they violate the Lithuanian Constitution, specifically Article 25(1, 2, 3, 4) – freedom of expression; Article 33(1, 2) – citizens' right to participate in governing their country; Article 34(1) – citizens' active right to vote; and Article 35(1, 2) – freedom of association. The author assures that nothing revolutionary has been stated here. Some scholars who examine the topic and challenges of political financing<sup>40</sup> have noted for quite some time that donations from citizens and other individuals with active voting rights should be regarded as an equivalent to voting as a means of supporting the political elite. In a wealthy society – such as ours – money can be considered a method and resource for participating in public life.

There are also opinions that external financial support for political parties should not only be allowed but even encouraged – as a sign of voluntary social-political commitment. Financial or other support for political parties is viewed as an element

<sup>35</sup> Lietuvos Respublikos vyriausiosios rinkimų komisijos 2020 m. spalio 31 d. sprendimas Nr. Sp-254 [Decision No. Sp-254 of the Central Electoral Commission of 31 October 2020]. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6997d7021b7e11eb9604df942ee8e443?positionInSearchResults=2&searchModelUUID=b30aae35-26b1-4536-a68a-79486bd8a5d9> [last viewed 14.04.2025].

<sup>36</sup> Proposals by the Lithuanian Chapter of Transparency International (TILS) for Amendments to Election Laws, 30 April 2021. Available: <https://www.transparency.lt/wp-content/uploads/2021/04/Transparency-International-Lietuvos-skyriaus-pasi%C5%ABlymai-rinkim%C5%B3-%C4%AFstatym%C5%B3-pakeitimams.pdf> [last viewed 14.04.2025].

<sup>37</sup> Facebook. The discussion “Election Campaigns Online: To Regulate or Embrace?” organized by Transparency International and the Central Electoral Commission, 30 April 2021. Available: <https://www.facebook.com/tilietuva/videos/128306695959735> [last viewed 14.04.2025].

<sup>38</sup> Decision of 7 June 2007 of European Court of Human Rights in the case *Parti Nationaliste Basque – Organisation Régionale d'Iparralde v. France*, No. 71251/01. Available: <https://hudoc.echr.coe.int/eng?i=002-2677> [last viewed 14.04.2025].

<sup>39</sup> Decision of 19 February 1998 of European Court of Human Rights in the case of *Bowman v. The United Kingdom*, No. 141/1996/760/961. Available: <https://hudoc.echr.coe.int/fre?i=001-58134> [last viewed 14.04.2025].

<sup>40</sup> *Dahl, R. A. Who Governs? Democracy and Power in an American City*. New Haven: Yale University Press, 1961, p. 226; *Nassmacher, K.-H. Introduction: Political Parties, Funding and Democracy*. In: *Funding of Political Parties and Election Campaigns*, *Austin, R., Tjernström, M.* (eds.). Stockholm: International Institute for Democracy and Electoral Assistance, 2003, p. 6

of an individual's right to freely participate in the activities of a political party.<sup>41</sup> Donations and financial support in this context should be understood more broadly than defined in the Electoral Code. Some voters wish to control the scope and content of the material support they provide to their candidate or political organization, as in certain cases, the actual use of funds does not always align with the donor's intentions.<sup>42</sup>

It must be emphasized that the regulation of political advertising in the Electoral Code is not entirely adequate in terms of its recognizability and labelling. Firstly, because the recognizability requirement applies only to paid political advertising. In other words, in this case, "true" political advertising is considered to be only paid political advertising, even though the definition of "political advertising" in the Electoral Code itself includes "information disseminated free of charge in any form or by any means" that aims to influence election results or voter motivation during elections, or promotes a state politician, political organization, its member, or participant in an election campaign, as well as their ideas, goals, or program.

The general principle of advertising recognizability requires that advertising be clearly distinguished from other disseminated information and be clearly recognizable by its format. Furthermore, if there is a likelihood that the audience (recipients) may not recognize advertising disseminated in a media outlet due to its presentation format, such advertising must be appropriately labelled.

Of course, political advertising is a specific type of advertising and is not subject to all general principles of advertising dissemination. However, the principle of recognizability should certainly apply. Otherwise, the audience may interpret the presented information as news – that is, as facts or true (accurate) data – rather than as advertising (as defined in the Article 2(82) of the Law on Provision of Information to the Public of the Republic of Lithuania<sup>43</sup>).

Despite this, the Electoral Code establishes an obligation to label only paid political advertising and only during the period from the start of the election campaign until the announcement of the final election results (Article 95(4)), although another provision of the Electoral Code states that unmarked political advertising – including both paid and unpaid political advertising – is considered hidden political advertising. Ultimately, the Code prohibits political advertising that is labelled in violation of the established requirements, as well as hidden political advertising, with violations subject to liability as stipulated by law (Article 95(5)). If these provisions of the Electoral Code were interpreted solely using a linguistic method – thankfully, this is not the case – it would seemingly lead to a legal absurdity.

## Summary (concluding remarks)

The adoption of the Electoral Code represents a pivotal development in Lithuania's electoral legal framework, encapsulating disparate provisions into a cohesive and

<sup>41</sup> *Von Alemann, U.* Party Finance, Party Donations and Corruption: The German Case. Available: [https://www.sozwiss.hhu.de/fileadmin/redaktion/Fakultaeten/Philosophische\\_Fakultaet/Sozialwissenschaften/Politikwissenschaft/Dateien/von\\_Alemann/01\\_alemann\\_party-finance-n-corrupt-exchange.pdf](https://www.sozwiss.hhu.de/fileadmin/redaktion/Fakultaeten/Philosophische_Fakultaet/Sozialwissenschaften/Politikwissenschaft/Dateien/von_Alemann/01_alemann_party-finance-n-corrupt-exchange.pdf) [last viewed 14.04.2025].

<sup>42</sup> *Burnell, P.* Introduction: Money and Politics in Emerging Democracies. In: *Funding Democratization*, *Burnell, P., Ware, A.* (eds.). New Brunswick: Transaction Publishers, 2007, p. 13.

<sup>43</sup> Lietuvos Respublikos visuomenės informavimo įstatymas (02.07.1996) [Law on Provision of Information to the Public of the Republic of Lithuania]. Available: <https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E> [last viewed 14.04.2025].

codified constitutional law. This endeavour not only enhances the clarity and consistency of electoral regulations but also establishes a robust foundation for more transparent and equitable election processes. By unifying these “rules of the game” into a singular legal instrument, the Electoral Code signifies a commendable step forward in modernizing electoral governance and addressing historical inconsistencies.

Nevertheless, certain regulatory choices embedded within the Code merit deeper reflection. The preference for outright prohibitions, particularly concerning third-party involvement in political campaigns, raises concerns about alignment with broader democratic principles. International standards, including the jurisprudence of the European Court of Human Rights, emphasize the value of regulatory balance over exclusionary measures to safeguard both freedom of expression and fair competition. These prohibitions may inadvertently stifle civic engagement, undermining the vibrant participation that is fundamental to a healthy democracy.

Furthermore, the inclusion of provisions regulating the Central Electoral Commission (CEC) within the Electoral Code itself has raised practical and theoretical concerns. The CEC’s status as a permanent institution, explicitly recognized in the Constitution, suggests the necessity of a separate law dedicated to defining its roles, responsibilities, and operational principles. Incorporating such provisions into the Electoral Code risks conflating distinct regulatory domains and complicating legislative adjustments to the CEC’s legal framework. Addressing this issue through a standalone legal act could enhance both clarity and legislative flexibility.

The Code’s innovations, such as enhanced transparency measures for political financing and the publication of financial agreements, deserve recognition. These changes aim to bolster public trust and accountability, providing greater oversight of campaign funding practices. Yet, their practical efficacy hinges on consistent enforcement and societal acceptance, which will be tested in forthcoming electoral cycles.

In conclusion, while the Electoral Code introduces significant advancements in Lithuania’s electoral law, it is not without its challenges. Addressing these gaps – particularly in relation to third-party regulation, the Central Electoral Commission’s legal framework, and harmonization with constitutional and international norms – will be essential to fostering a resilient and inclusive democratic framework. The success of this ambitious legal instrument will ultimately depend on its ability to adapt and evolve in response to practical realities and the needs of an engaged civil society.

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