

# COUNTRY REPORT

## LITHUANIA



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## Introduction: Country Background<sup>1</sup>

Current Constitution of the Republic of Lithuania was adopted by citizens in the referendum of 25th of October, 1992 (hereinafter – Constitution)<sup>2</sup>. Initially it consisted of preamble, a main part, final provisions and following legal acts: the Constitutional Law “On the State of Lithuania” (11th of February, 1991), the Constitutional Act “On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions” (8th of June, 1992) and the Law “On the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania” (25th of October, 1992). Lately it was supplemented by the Constitutional Act “On Membership of the Republic of Lithuania in the European Union” (13th of July, 2004). All these parts form a single, directly applicable act of the highest legal force.

The Constitution states that sovereignty shall belong to the Nation (Article 2) and the Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives (Article 4). The Constitution and other national legal acts provides tools both for representative participation and for direct involvement taking decisions. However, during almost three decades only an insignificant part of initiatives has been implemented.

Looking from the theoretical backgrounds, the deliberative practices reflect the level of civic participation in terms of implementing participatory innovations and capacities to respond to the local issues. In defining the deliberative practices in the country we should meet the criteria of (1) impact (commissioned by a public authorities or elected politicians), (2) representativeness (involvement of different stakeholders) and (3) forms of deliberation (different forms of meetings, discussions, forums and other communicative tools) (Carson, Hartz-Karp, 2005). Some authors suggest combining the multiplicity of deliberative practices and connections between these venues. Different discursive arenas and venues represent the exposition of different viewpoints and involvement of diverse civic society actors (for example, stakeholder round tables, expert committees, community forums, public seminars, etc.). The other characteristic of different civic society deliberative forms is that they involve both, formal and informal communication strategies, for example, negotiation, contestation, consensus or even a conflict. The initiators of deliberative forms may vary from local civic actors to organized social movements, political institutions or state authorities as the rules and institutional constraints differ (Hendriks, 2006). Thereby mixed discursive spheres are important encouraging the collective action of different types of bottom-up and top-down actors. For example, open public forums could involve high level bureaucrats, politicians and random everyday citizens (Carson, Hartz-Karp, 2005; Lukensmeyer, 2005).

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<sup>2</sup> The Constitution of the Republic of Lithuania (lt. Lietuvos Respublikos Konstitucija) – <https://www.e-tar.lt/portal/lt/legalAct/TAR.47BB952431DA/asr>

## Legal Framework of Constitution-Making & Constitution Making Dynamics

Referring to the Article 9 of Constitution, the most significant issues concerning the life of the State and the Nation shall be decided by referendum. Referendum Law<sup>3</sup> establishes the procedure for calling and conducting referendums, however it is fixed in Constitution that besides the National Parliament (only the cases accordingly to the national Referendum Law), a referendum shall also be called if not less than 300,000 citizens with the electoral right so request (Table 1).

**Table 1.** The right to initiate the referendum.

300,000 citizens who are eligible to vote.	1/4 of Members of National Parliament – at least 36 members.
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Referring to the Referendum Law, mandatory and consultative (deliberative) referendums may be held in the Republic of Lithuania. Mentioned legal act provides a list of issues, which could be solved solely through the mandatory referendums. As well they may be held with regard to other laws or provisions thereof, which 300,000 citizens having the right to vote or the National Parliament shall submit a proposal for to be decided by means of a referendum.

If there is no obligation to hold a mandatory referendum in order to solve the issue, which is important to the State and the People, consultative (deliberative) referendums if it is proposed by 300,000 citizens having the right to vote or the National Parliament, may be held.

Despite the type of referendum, it deemed as having taken place if over half of the citizens, who are eligible to vote and registered in electoral rolls, have taken part in it. Legislation provides different requirements for separate issues, resolutions of mandatory referendums to be adopted. In case of consultative (deliberative) referendums for adoption it is enough to receive approval from at least of half of voters who have participated in referendum. In case of approval the resolution must be deliberated in National Parliament within one month from its announcement.

Consultative (deliberative) referendums have some peculiarities related to their results – even in case the referendum has not taken place because of low activity of voters (participated less than half), National Parliament may consider following issue, resolution during the deliberation of laws and other draft legal acts.

Since the 11th of March, 1990 (Restoration of Independence) until July, 2020 fourteen referendums have been held in Lithuania and only half of them took place. The majority of held referendums were mandatory. Two consultative (deliberative) referendums on nuclear power plant issues were held in 2008 and 2012. The first one (to prolong the work of Ignalina nuclear power plant) did not take place, the second one took place, however the provision was not adopted (more than 62 percent of votes

<sup>3</sup> Referendum Law of the Republic of Lithuania (lt. Lietuvos Respublikos referendumo įstatymas) – <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.169554/asr>

were against the construction of a new nuclear power plant in the Republic of Lithuania).

**Table 2.** Referendums since the 11th of March 1990 until the July 2020.

<b>Criteria</b>	<b>Indicator</b>
Number of referendums	<b>14</b>
Took place	<b>7 (50 %)</b>
	<p><b>Positive decision (4):</b></p> <ol style="list-style-type: none"> <li>1. On the Independency of the Republic of Lithuania (1991);</li> <li>2. On the Unconditional and Immediate Withdrawal of the Soviet (currently Russian) Army from the Territory of the Republic of Lithuania (1992);</li> <li>3. On the Enactment of the Constitution of the Republic of Lithuania (1992);</li> <li>4. On the Membership of Republic of Lithuania in the European Union (2003).</li> </ol>
	<p><b>Not enough voters or negative decision (3):</b></p> <ol style="list-style-type: none"> <li>1. On the Restoration of the Presidential Authority of the Republic of Lithuania (1992);</li> <li>2. On the Construction of the New Nuclear Power Plant in the Republic of Lithuania (2012) – <b>consultative (deliberative) referendum;</b></li> <li>3. On the Amendment of Article 12 of the Constitution (2019) – issue of dual citizenship.</li> </ol>
Did not take place	<b>7 (50 %)</b>

In just four referendums, voters voted in favor of the proposed provisions (supported proposal) and had enough votes. Three of them were held in 1991-1992, the last one in 2003 (voters approved the aim to join the EU).

It is not coincidence that the first referendums were related to issues, which were the most important to the statehood – independence, constitution, security (expulsion of foreign troops), economics and property (privatization issue, etc.), etc. This led to a high level of citizen participation. The joining EU in 2004 was followed by the few referendums and referendum initiatives, related to the issues of national energy independence (energy security) as Lithuania has undertaken the obligations to close the Ignalina nuclear power plant.

Two last referendums of 12th of May, 2019 aiming to solve the issue of dual citizenship (amendment of Article 12 of Constitution) and reduce the number of Members of Parliament (amendment of Article 55 of Constitution) were organized together with the first round of Presidential elections. Initially it was planned to organize both during the first and second round (12th and 26th of May, 2019) of Presidential elections, however, the Constitutional Court of the Republic of Lithuania explained that such decision contradicts the Constitution and the constitutional principle of a state under the rule of law.

It is clear that both issues will return to the agendas of future referendum initiatives: the issue of dual citizenship is relevant and the results of the last referendum have shown that, in one or another way it can be resolved; the question of reducing the number of Members of Parliament in general is populist and revived time to time. The majority of referendum initiatives did not turn into referendums due to difficulties in collecting a significant for Lithuania number of signatures (300,000).

### **Incremental constitution-making**

The Article 102 of Constitution states that the Constitutional Court shall decide whether the laws and other acts of the Parliament (Seimas) are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws. The Article 105 further details the functions of Constitutional Court.

Only the Constitutional Court has been granted the right to interpret the provisions of the Constitution. Accordingly, from the explanations provided by this court, other processes related to the entry into force and validity of legal acts had to take place. This also applies to constitutional initiatives, as the latter are also subject to requirements related to the principle of the supremacy of the Constitution.

One of the most important features of the constitution is its stability. The Constitutional Court has repeatedly (for instance, Resolution of 16 of January, 2006, Resolution of 28 of March, 2006 etc.) held that the Constitution must be stable and that intervention in it should not be done unless it is legally necessary.

Accordingly to the practice of Constitutional Court, ‘the norms of the Constitution are equally binding on all legal entities, including referendum initiative groups, as well as groups of citizens of any size. They can neither be identified with the Nation nor speak on its behalf. The Nation expresses its will directly, usually in a referendum or direct general election, i. y. only after a referendum or direct general election can one state the will of the Nation on a particular issue <...>’ (Resolution of 1st of December, 1994). Any draft and any provisions of proposed legislation submitted to the referendum must be harmonized with the Constitution. The principle of the supremacy of the Constitution imposes an imperative not to submit to the referendum such possible solutions that would not comply with the requirements arising from the Constitution.

The Constitutional Court forms the constitutional doctrine, amends it if appropriate amendments to the Constitution are made, has the exclusive right to interpret the constitution, and therefore plays a very important role. Particularly important supervision of legislation, including planned amendments to the constitution, in order to determine if they are not in conflict with the Constitution itself. Amendments to the Constitution cannot violate the provisions of the Constitution, be in conflict with the values enshrined in them. The Constitution is an integral act, so amendments that violate integrity and values are not possible.

The Constitutional Court may decide which initiative to amend the Constitution is compatible with the Constitution and which is in conflict with it. Accordingly to the Article 72 of The Law on the Constitutional Court of the Republic of Lithuania, rulings issued by the Constitutional Court shall be binding upon all state institutions, courts, all enterprises, establishments, and organisations as well as officials and citizens.

Undoubtedly, the practice of the Constitutional Court has a significant and decisive influence on the preparation of draft amendments to the Constitution and possibilities that one or another draft may turn into an amendment to it.

Participation in international organizations has also influenced the Constitution. Thus, the Constitutional Act ‘On Membership of the Republic of Lithuania in the European Union’ (2004) became an integral part of the Constitution (Article 150 of Constitution). This legal act constitutionally approved the membership of the Republic of Lithuania in the European Union. No amendments to the Constitution may be made that would deny international Obligations of the Republic of Lithuania (for instance, obligations related to membership in NATO) if following are not waived in accordance with the norms of international law.

### **Deliberative initiatives on national and municipal level**

In Lithuania the participation of citizens who engage in a collective deliberation events initiated by state authorities, public institutions or civil society actors is rather incidental and does not have a long tradition of organizing collective action. Formally, the civil society actors can participate in state-level decision-making procedures through different channels, e.g. stakeholders committees for legislation initiatives, tripartite councils, formal NGO committees in the specific policy fields (family policy, welfare services, child rights protection, etc.). Nevertheless, these committees hold the consultancy role and provide field-specific information for decision-makers rather than initiate and stimulate deliberative communication forms. From the national level we focus only on two specific national-level deliberative cases, such as deliberative polls and referendum initiatives.

#### *National level deliberative events.*

**Deliberative polls.** Deliberative polls can be considered as a specific form of mini-publics that have effects on participant’s opinions and preferences. According to recent research the deliberative polls as a form of mini-publics increase the levels of



agreement on single policy option, define the preferences of the participants, promotes mutual respect of different interest groups and enhance the considerations on public interest (Fishkin & Luskin, 2005). The deliberative polls are used as a new form of framing public opinion preferences in Lithuania. The instrument holds the elements of public opinion polls methodology and used to engage public by specific policy issue, such as education field, environmental policy (e.g. nuclear power plant closure in Visaginas district, situation on foresting), social welfare, human rights (e.g. discrimination cases), international migration and double citizenship for Lithuanians. These public opinion results are shared with the larger public and with opinion-leaders and policy-makers who consider public preferences in preparing legislation projects. In some cases the public opinion results are considered as a part of formal procedures, e.g. defined in legislation on self-governance, but do not have a strong impact for final decision-making procedure. However, public opinion polls as instruments are frequently used by municipalities rather initiatives by national level authorities.

#### *Referendum initiatives.*

In Lithuania there are two types of referendum: mandatory and consultative (deliberative) referenda. According to national legislation, the consultative (deliberative) referendum is valid when over a half of the citizens, having the right to vote and having been registered in electoral rolls, have taken part in it. When a half of the voters have been in favor of the resolution topic, the resolution is been adopted. If the referendum didn't pass the adoption, the citizen opinion may (or may not) be considered in the parliamentary deliberations on drafting legal acts.

Taking into account demographic situation and migration issues in Republic of Lithuania, the required number of citizens (300,000) with the electoral right is more than challenging. It is not surprisingly that the noticeable part of initiatives to call referendum related to the intention to amend mentioned article and set the lower requirements.

Attempts to lower number of required signatures to 100,000 were performed in 2002, 2004, 2009, 2012, 2013 and 2016. The failure was followed by attempt to reduce the number to 50,000 in 2018. There were proposals to allow to announce referendums in each administrative unit of the territory of the State of Lithuania in order to resolve the most important issues of that administrative unit (in 2009 was proposed to allow to announce such referendums if not less than 10 percent of permanent citizens of relevant administrative unit demands).

One of the mostly discussed Lithuanian case for referendum initiative was on exceeding the operation of the Ignalina nuclear power plant held in 2008. The consultative referendum was organized in the context of defining the EU Accession Treaty amendments on obligations to close the power plant. The Parliament initiated the consultation with the citizens on the withdrawal of the provision signed in the Treaty. Finally, the referendum was organized together with the parliamentary elections in 2008. The referendum was announced as “failed” despite the fact that



91,09 % of the voters in the referendum voted against the suspension of operations in nuclear power plant. The reason is relatively low voter turnout that wasn't enough to adopt the changes (48, 43%) (Central Electorate Commission information).

Among the most popular is initiative to reduce the number of Members of Parliament (current number – 141). The last one attempt to reduce the number to 121 was in 2019. In 2003 it was suggested do reduce number to 131, in 2012 – to 101, in 1995 – to 91. However, the most drastic initiative was registered in 2000 – it was proposed to reduce the number of Members of Parliament to 71 by terminating mandates of 70.

There were unsuccessful attempts to provide the citizens tool to contribute calling an early election of the National Parliament. Other initiatives were related to the changes of election system as to National Parliament as in municipal elections, property (wish to protect land and other resources from passing into the hands of foreigners), currency (transmission from litas to euro), membership in NATO, etc. Some initiatives were implemented even though they never turned into referendums after relevant attempts – for instance, the proposal to elect the mayor directly (the first elections were held in 2015). It was enough to make some amendments in national legislation.

#### *Citizens initiatives on lower tier: local autonomy and deliberative practices*

We also should notice the other deliberative practices in Lithuania that are implemented on local (municipal, LAU) level. In this report we provide the national examples that are relevant for theoretical framework on political innovations, governance, citizen participation and democratic deliberations forms. We took the deliberative cases from local (municipal) level because its better represents the local state-civil society relations in terms of collective action output and variety of civic initiatives forms. Contrary, the previous section represents rather low impact of national level public engagement.

Looking from the administrative system structure, Lithuania is as a single NUTS-2 level country without lower tier of regional administrative units. The upper administrative tier (regional government level, former “counties”, in total 10) was abolished in 2010 considering the arguments of administrative burden, economy of scale and overlapping municipal and regional functions. Counties (commonly used as “regions”) now exist as administrative and statistical units without any executive power. Another reasonable argument was to enable the larger fiscal and administrative autonomy of single municipalities. However, the political agenda of territorial autonomy was not supported enough, contrary, the central government initiatives supported increasing tendencies for territorial consolidation processes. Recently 60 single municipalities in total correspond the LAU 1 level which have established their own administrative non-autonomous subdivisions.

The absence of strong regional government tier implies the tendencies of increasing centralization where central governmental actors have enough

powers to regulate democratic participatory initiatives. The large list of state-delegated functions and responsibilities are delegated to the lower tier of self-government institutions (municipalities) which are considered as the main actors in local policies and local innovations. The allocation of the tasks and financial resources is based on the centralized planned state policies, including vocational training, pre-school childcare, secondary education, labor market, area regeneration policies, health care, etc. However, the formulation and implementation of local economic growth and territorial development strategies is under the responsibility of single municipality. Thereby due to the low fiscal and functional discretion, wide range of state-delegated responsibilities and increasing centralization the implementation of different deliberative democracy instruments is mostly based on citizen information campaigns, information-sharing and inter-sectoral and inter-institutional consultation-oriented instruments. We discuss two national cases of lower-tier deliberative democracy that include the elements of democratic deliberations, particularly, participatory budgeting and sectoral municipal councils.

Participatory budgeting is acknowledged as an effective tool for “empowered deliberative democracy” (Fung and Wright, 2003). “Empowered deliberative democracy” can be characterized by three main principles: “(1) focus on specific, tangible problems, (2) involvement of ordinary people affected by these problems and officials close to them, and (3) the deliberative development of solutions to these problems” (Fung and Wright, 2003, 17). The main arguments that consider the popularity of participatory budgeting approach focus on the weaknesses of traditional participatory democracy mechanism that should enforce the better civic participation in decision-making processes. The strength of participatory budgeting reforms is reliance on the participation, fostering “reason based” decision-making and citizen empowerment to “tie action to discussion” (Fung and Wright, 2003, 7).

New constitutions were approved in new democratic countries of CEE region, including Lithuania that define the principles of autonomy for the lower level of governance and encouraging citizen participation. However, due to the long-term communist legacy the citizens seem to be mistrustful of collective action and civic initiatives. Their participation is more passive in local political agenda and public services delivery initiatives (Krenjova, Raudla, 2013). The appearance of new business actors is also considered as they came to dominate the civil society of the new democracies (Fölscher 2007; Randma-Liiv 2008). Hence, participatory budgeting combines the elements of indirect democracy with direct democracy that might help the local authorities to provide the citizens new deliberative platforms and options to strengthen local social capital and inter-institutional trust.

In Lithuania case the initiatives on municipal participatory budgeting is rather new instrument implemented only in few municipalities on experimental basis, e.g. Šiauliai city municipality, Alytus city municipality, Lazdijai district municipality. In total 9 municipalities among 60 are already implementing small scale participatory budgeting initiatives. In 2020-2021 six new municipalities are preparing their

administrative basis for introducing participatory budgeting initiatives. Research results from 2011 have revealed that Lithuania had no specific national and regional legislation or regulation on participatory budgeting, and that participatory budgeting had a low priority in central government agenda (Vodusek and Biefnot, 2011). Thereby the municipalities can involve citizens in decision making referring to the existing legislative framework, e.g. the European Charter on Local Self-government, the Law of the Republic of Lithuania on Local Self-government, the Law of the Republic of Lithuania on Petitioning. Referring to national legislation, local self-government institutions (municipalities) should create conditions for citizen participation in public decision making, organize surveys, encourage and protect citizen initiatives on various civic matters (Law on Petitioning, 1999; Law on Self-government, 2000). The Law on Self-government specifically provides for public discussion of the draft budget.

In 2020 Transparency International Lithuania has published the report on municipal survey on civic participatory initiatives and options for delivering participatory budgeting on municipal scale. The report included the questions on the local citizen options to participate in the decision-making process in municipalities and the measures used by the local government to promote higher level of civic engagement. In general, the municipalities confirm that the participatory budgeting increase citizen involvement in municipal budgeting, stimulate public debates on urban development, community's development, improve the quality of life, and promote business creation and participation in municipal political agenda. 9 out of 10 municipalities state that from 2019 they have used at least one instrument to foster public discussions. Representatives of municipalities usually consult with the population on the general municipal budget, infrastructure, environmental issues, culture, quality of public services and other issues. The main deliberative instruments used are public consultations with inhabitants, information campaigns and options for community decision-making (Transparency International Lithuania, 2020 report). The ones that involve individual citizens are mostly information-sharing or consultation-oriented instruments by their nature.

Another common form for deliberative mechanisms is sectoral municipal councils and boards that mostly operate as advisory boards to local authorities. The advisory boards are based on institutionalized interactions between representatives of municipalities (mayors, councilors and members of the municipal administration) and local societal actors (citizen groups, communities, local NGO organizations, neighborhood groups, etc.) (Teles et al., 2020). These municipal bodies reflect few main principles of deliberative forms and mechanism, including political impact, representativeness of different political economic and social stakeholders) and using different forms of meetings, discussions, forums and other communicative tools (Carson, Hartz-Karp, 2005). The bodies also incorporate vertical inter-governmental relationships (among the municipal level and higher levels of government) and horizontal ties with various actors representing different spheres of civic society (public services, education, community development, culture, etc.). To meet the national regulation in some policy fields, Lithuanian municipalities have established

sectoral councils accordingly. These advisory bodies mainly work in the field of NGO development, local communities' development, youth policies and enable the involvement of community organizations or citizens' groups. The Law on Local Self-Government and other related legal documents define the obligation of municipal authorities to establish these advisory bodies in order to institutionalize and support the interconnectedness between different local stakeholders. In general, the municipal advisory boards and councils are considered to be centrally imposed mechanisms that intertwine the interests of stakeholders at the local level and supervise and monitor the implementation of state policies (in the fields of NGO, youth policies, also tripartite committees) (Bucaite-Vilke, Lazauskiene, 2020). The main activities of sectoral boards include public consultancy and advisory functions for local authorities. By contrast, the boards of local action groups could be also considered as a bottom-up consultative form of democratic deliberations. Local Action Group boards reflect the bottom-up approach for strengthening societal actors in rural regions and involve the broad range of local actors, such as local authorities, councilors, business and civic groups. The aim of these advisory boards is to stimulate local entrepreneurship and partnerships involving rural communities, representatives of local government, and businesses on public debate and communication basis.

## **Conclusion**

Summarizing the current Lithuanian situation on constitutional-making and deliberative practices, the national research demonstrates that there are many institutional and legislation barriers to enforce more active citizen involvement on national or municipal level to different deliberative initiatives. On municipal level the main limitations are related to the lack of financial and functional discretion of local authorities, limited financial autonomy, mistrust in local authorities and politicians, weak traditions of citizen participation in local decision-making agenda, bureaucratic inertia (Birskyte, 2013; 2019). Thereby, active citizen involvement is an essential component of participatory budgeting. From one hand, citizen engagement can be fostered suggesting variety of deliberative instruments and mechanisms, for example, public debates, informational campaigns, public consultations, local boards and community voices.

From the other hand, the top-down policy formation approach is typical for a country where local authorities have rather limited autonomy to modify nationally imposed policy fields to local fields. Consequently, the citizen involvement remains passive, especially in municipal strategic planning processes. Discussions with citizens, public consultations or opinion surveys are rarely organized and implemented. Due to the large size of municipalities and low local autonomy level (including low financial autonomy and the absence of local taxes), the research suggests applying the multi-stakeholder participation model, which is already the case in Poland. The multi-stakeholder participation approach assumes the involvement of heterogenous local actors, especially from business sector that holds economic power (Krenjova, Raudla, 2013).

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