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(VENICE COMMISSION)

COMMENTS

ON THE CONSTITUTIONAL AMENDMENTS PROPOSED BY THE PRINCELY HOUSE OF LIECHTENSTEIN; AND ON THE CONSTITUTIONAL AMENDMENTS PROPOSED BY THE "CITIZENS' INITIATIVE FOR CONSTITUTIONAL PEACE"

by

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1. General Observations

Under general international law States are sovereign in regulating their internal and external affairs, including the choice and shaping of their governmental system and constitutional order. State sovereignty implies exclusive jurisdiction over the territory of the State and over its population, and freedom from intervention by other States. Its scope and the measure of its exclusiveness depend, however, on obligations arising for the State from customary international law and international treaties to which the State is a party, and from the legal consequences of its membership of international organisations.[1]

In this context, in terms not of the State but of its people, one refers to the right of (political) self-determination[2]: the right of peoples to choose and determine for themselves the form of political organization to which they wish to belong and their relation to other peoples.[3] This right may imply the right of secession from the State under whose jurisdiction peoples find themselves. However, the latter implication has found recognition in international practice for situations in which that jurisdiction is exercised by an authority that colonizes the people concerned.[4] The same may perhaps apply in the comparable situation in which the people concerned are oppressed, exploited or discriminated against, or where fundamental individual or collective rights are systematically violated, but that implication is less generally accepted.[5] In exercising their right of (political) self-determination, the people concerned may opt for independence, or for integration or association with another State.[6] Outside the particular context just mentioned, however, the right of (political) self-determination has to be reconciled with the right of territorial integrity of the State.[7]

2. The Right of Secession of the Gemeinden *of Liechtenstein*

Article 1, paragraph 1, of the draft Constitution as proposed by the *Fürstenhaus* states that the *Fürstentum* must serve its people, enabling them to live in freedom and peace. As an expression of that freedom, Article 4, paragraph 2, of the draft grants to each individual *Gemeinde* the right to secede from the *Fürstentum*, if a majority of the inhabitants entitled to vote so decide. According to the Explanatory Memorandum, the *Gemeinde* may then become an independent State or join another State.

As is pointed out by Professor Matscher, the proposed right to secede cannot be seen as the incorporation into the Liechtenstein Constitution of the internationally recognized right of (political) self-determination, if only for the reason that the individual *Gemeinden* of the

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1 Article 1, paras 2 and 7, of the Charter of the United Nations; Principle I of the Decalogue of the 1975 Final Act of Helsinki. See also Franz Matscher, *Liechtenstein: Europarechtliche und allgemein-völkerrechtliche Aspekte des neuen Verfassungsentwurfs des Fürstenhauses*, 2000, pp. 3-4.

2 See Article 1, paragraph 2, of the Charter of the United Nations.

3 See Ian Brownlie, *Principles of Public Intertnational Law*, 5th ed. 1998, p. 599.

4 Resolution 1514 (XV) of the General Assembly of the United Nations, Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960. See also Michael Akehurst, *A Modern Introduction to International Law*, 6th ed. reprint 1993, p. 296.

5 See Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as Principle VIII of the Decalogue of the 1975 Final Act of Helsinki. See also Malcolm N. Shaw, *International Law*, 4th ed. 1997, pp. 215-218.

6 Akehurst, *op. cit.* (note 4), pp. 294-295.

7 See the 1970 Declaration on Principles of International Law Concerning Friendly Relations. See also Stephan Breitenmoser, *Rechtsgutachten zu den Verfassungsvorschlägen des Fürstenhauses und der Verfassungskommission des Landtages des Fürstentums Liechtenstein zur Änderung der Verfassung des Fürstentums Liechtenstein*, 200, p. 42.

Fürstentum are not to be equated with "peoples" as the beneficiaries of that right; not even if they were considered as meeting the definition of constitutive states of a federation.[8] Moreover, the international right of secession as an exercise of the right of self-determination *stricto sensu* refers to secession *against the will of the State from which the "people" secede*. In the case of proposed Article 4, paragraph 2, the secession would take place in accordance with a procedure expressly provided for in the Constitution of the State concerned. For that same reason, the international right to respect for territorial integrity is not at issue here. There are several relevant international (legal) elements, such as the recognition, in accordance with the internationally recognized criteria, by other States of the seceded *Gemeinde* as a separate State or, as the case may be, the consent of the State which the *Gemeinde* wishes to join, the issue of State succession *etcetera*.[9] However, these aspects do not affect the essence of the question of whether the proposed possibility of secession would be in violation of international law. There is no specific norm of international law with which the proposed amendment would be in conflict.[10]

The fact that a minority of the population of the *Gemeinde* could have to face the situation where their *Gemeinde* secedes from their home State against their will, does not seem to violate any of their fundamental rights. The secession cannot be qualified as an expulsion prohibited by Article 3, first paragraph, of Protocol no. IV to the European Convention on Human Rights. First of all, the secession is a free choice, be it by a majority; the majority rule is generally recognized as a legitimate and democratic decision-making procedure. Moreover, those belonging to the minority would have the option to move to another *Gemeinde* within the *Fürstentum* to avoid their having to live in another State. For the same reasons, there does not seem to be any infringement of the rights laid down in the 1985 European Charter on Local Government.

It could be argued that, by a majority decision of the *Gemeinde* to secede from Liechtenstein, the majority of the population of Liechtenstein would be overruled and thus their right of (political) self-determination would be infringed upon.[11] It is obvious that any secession, in particular in the case of certain *Gemeinden*, would have very serious consequences for Liechtenstein.[12] However, if the newly proposed Constitution, including the procedure for secession here at issue, would be adopted by the prescribed democratic procedure, the (majority of the) citizenship of Liechtenstein would exercise its right of (political) self-determination.[13] Moreover, that majority may afterwards exercise the right to change the Constitution, including the proposed Article 4.

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[8] Matscher, *op. cit.* (note 1), p. 6. Thus also Breitenmoser, *op. cit.* (note 7), p. 43; Jochem Frowein, *Rechtsgutachten zu den Verfassungsvorschläge des Fürstenhauses des Fürstentums Liechtenstein zur Änderung der Verfassung des Fürstentums vom 2. Februar 2000*, 2000, p. 5; René Rhinow, *Rechtsgutachten im Rahmen der Verfassungsdiskussion im Fürstentum Liechtenstein*, 2000, pp. 26-27.

[9] Frowein, *op. cit.* (note 8), pp. 4-6; Matscher, *op. cit.* (note 1), p. 7.

[10] Op the same opinion, Breitenmoser, *op. cit.* (note 7), p. 44 (see, however, *ibidem*, pp. 131-133); Frowein, *op. cit.* (note 8), p. 6; Matscher, *op. cit.* (note 1), p. 7; Arnulf Clauder, *Parlementarische Demokratie oder Monarchie auf demokratischer und parlamentarischer Grundlage?*, 2002, pp. VI-2-3. *Contra* Rhinow, *op. cit.* (note 8), pp. 28-29.

[11] See Bernd-Christian Funk, *Rechtsgutachten über Fragen der Reform der Verfassung des Fürstentums Liechtenstein*, 2001, p. 13; Rhinow, *op. cit.* (note 8), p. 29.

[12] See Gerard Batliner, *Die Verfassungsänderungsvorschläg des Fürsten (vom 1. März 2001)*, 2001, p. 58. See also Clauder, *op. cit.* (note 10), p. VI-3; Funk, *op. cit.* (note 11), p. 13.

[13] See, however, Rhinow, *op. cit.* (note 8), pp. 30-33, who defends the opinion that the Constitution must make the reservation that on a case to case basis the competent bodies through democratic procedures will agree with the secession.

From the perspective of an effective functioning of the international community of States, opening the way in the Liechtenstein Constitution for the diminution of an already very small State, and the creation of an even smaller State, would seem to be inappropriate and undesirable, and to give cause for critical reactions from that international community.[14] It may even have the effect that an international organisation takes the position that the remaining State has become so small that Liechtenstein's membership cannot be continued, or that it or the newly created State does not qualify for admission to membership. This would, however, require previously established objective criteria for membership.

All this does not change the fact that a constitutional provision as discussed here is not in violation of international law and falls within the domestic jurisdiction of the *Fürstentum* and of any third State involved.

3. Division of Powers in a Democracy

In the proposed amendments to the Constitution the *Fürst* and the *Fürstenhaus* are attributed rather far-reaching legislative and executive powers. Thus, the *Fürstenhaus* would have the power to adopt and amend the *Hausgesetz* that regulates succession to the throne and related matters (Article 3). According to the Explanatory Memorandum, that statute would not even be subordinate to the Constitution. The *Fürst* would be given the power to adopt emergency regulations, by which the scope of even Constitutional provisions might be limited (Article 10, paragraph 2). The *Fürst* would have the power to veto any Bill by not giving his assent within six months (Article 65, paragraph 1). The *Fürst* might lose confidence in the government, in which case the government must resign even if it still enjoyed the confidence of the *Landtag*; the *Fürst* would then have the power to appoint an interim government (Article 80). No constitutional amendment, except one to the effect of abolition of the monarchy, could be adopted without the approval of the *Fürst* (Article 112, paragraph 2).

Against the background of these powers, it is highly relevant that the proposed Article 7 would grant the *Fürst* full immunity, while the *Fürst* would also not be subject to control by the *Landtag* (Article 63). No substitute is provided in the form of responsibility of the government for decisions and acts of the *Fürst.* By popular initiative lack of confidence might be expressed vis-à-vis the *Fürst*, but the *Fürstenhaus* would have the final say as to what consequences this should have (Article 13 ter). Ultimately, however, the monarchy could be abrogated by referendum (Article 113).

General international law, as it stands, does not prescribe any specific form of government.[15] However, at least for Europe, it may be stated that democracy is the only form of government accepted. Democracy is a condition for membership of the Council of Europe[16] and the European Union[17], and it is presented as "the only system of government of our nations" in the 1990 OSCE Charter of Paris for a New Europe.

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[14] Those practical aspects seem to induce Breitenmoser to his negative conclusion; *op. cit*. (note 7), pp. 131-133. Frowein, *op. cit.* (note 8), p. 4, speaks of "ein erheblicher Störungsfaktor im Rahmen der Völkerrechtsordnung". See also Rhinow, *op. cit.* (note 8), p. 27.

[15] Breitenmoser, *op. cit.* (note 7), p. 23. See, however, the 2000 Declaration of Warsaw, *ibidem*, pp. 45-49.

[16] See Breitenmoser, *op. cit.* (note 7), pp. 51-90; Matscher, *op. cit.* (note 1), pp. 12-14.

[17] And, consequently, also for future admission. See on the one hand the second paragraph of the Preamble and Article 6, paragraph 1, of the Treaty establishing the European Union, and on the other hand the 1993 Declaration of Copenhagen. See also Breitenmoser, *op. cit.* (note 7), pp. 110-126.

Although there is not yet an internationally codified definition of "democracy"[18], in the light of the evaluation of the proposals of the *Fürstenhaus* for a new Liechtenstein Constitution the elements of representation, pluralism, a constitutionally guaranteed separation of powers and the Rule of Law may be considered key elements,[19] as is also emphasized in the Charter of Paris.

The principle of representation requires *inter alia* that the Executive is accountable to the people. For all practical purposes this means accountability to the electorate, either in an indirect way through parliamentary control, or in a direct way through referenda or new elections. Representation in conjunction with pluralism requires in this context effective guarantees that all segments of society (sexes, races, religions, national minorities *etcetera*) participate in government on an equal basis through general, free and secret elections, according to inexpensive, multi-party electoral procedures.[20] The same holds good for participation in procedures of referenda or other consultations. Pluralism also requires, or rather presupposes, freedom of opinion, freedom of association and assembly, and freedom from discrimination in general.

Moreover, it is a common feature of a representative and pluralist democracy that the primacy of power rests with the representative and democratically elected body. That body must have the right to discuss, amend and adopt or rescind proposals for legislation, as well as the right of initiative to initiate new legislation. This holds good also, and *a fortiori,* in relation to the Constitution. In addition it must have the power of control (financially and otherwise) over the Executive, which therefore, depends for its legitimization on the confidence of the democratically elected body.[21]

Finally, especially within the European context, democracy is usually mentioned in connection with the Rule of Law. Apart from the power of judicial review, to which reference will be made in § 4, the Rule of Law implies the hegemony of the law, in particular written or unwritten constitutional law. In relation to democracy this means that the form of government, the distribution of powers, the electoral system and basic political rights must be based on the law and can be changed only by law, through a constitutional and democratic procedure.

In a monarchic system, the position of the Head of State, who is neither directly nor indirectly elected, is by definition questionable from the point of view of a representative and pluralist democracy. In most monarchies this has resulted in that position being mainly of a symbolic and ceremonial character, representing the unity of the nation rather than its pluriformity, and with a derived responsibility to the democratically elected representative body through government.[22] Any independent legislative and/or executive power with real impact in the hands of the monarch would make the fact that he is not democratically elected, and not under parliamentary or judicial control, problematic.[23]

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[18] For a comprehensive survey of elements, see Matscher, *op. cit.* (note 1), pp. 9-20, and Breitenmoser, *op. cit.* (note 7), pp. 23-31.

[19] See Breitenmoser, *op. cit.* (note 7), pp. 4-12 and 30-31.

[20] See Article 3 of Protocol no. I to the European Convention on Human Rights, and the relevant case law of the European Court of Human Rights. See also Matscher, *op. cit.* (note 1), pp. 16-20.

[21] See Frowein, *op. cit.* (note 8), pp. 8-9. The requirement that legislation has a democratic foundation ensues also from Article 3 of Protocol no. I to the European Convention on Human Rights.

[22] Clauder, *op. cit.* (note 10), Einleitung p. 2; Frowein, *op. cit.* (note 8), p. 24.

[23] P. van Dijk & G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. 1998, p. 664. See also Frowein, *op. cit.* (note 8), pp. 11-12, and the reference by Matscher, *op. cit.* (note 1), footnote

In that perspective the proposed powers of the *Fürstenhaus* and the *Fürst* of Liechtenstein would seem to amount to a step backwards on the road to effective representative and pluralist democracy. The *Fürstenhaus* would have exclusive legislative power in a certain field without any form of parliamentary control or judicial review, and even without the obligation to respect the supremacy of the Constitution; the *Fürst* would have the power to adopt emergency regulations without any involvement of the government and without judicial review;[24] the *Fürst* would have the power to veto democratically adopted legislation, including any amendment of the Constitution, without ministerial responsibility; the acts of the *Fürst* in general would not be subject to any democratic control through ministerial responsibility nor to any judicial review; the *Fürst* would have the power to dismiss the government even against the will of the *Landtag*; the Council of the *Fürstenhaus* would have the power to ignore the outcome of a popular vote expressing lack of confidence in the *Fürst*.

This leads to the conclusion that, even if tested for their conformity with the core elements of democracy and the Rule of Law, the most important constitutional amendments proposed by the *Fürst* to enhance his position and that of the *Fürstenhaus* do not meet present European standards and would mean a step backwards on the way to effective democracy in favour of monarchic rule that lacks democratic legitimization.[25] It could even be argued that the possibility of exercising important legislative and executive powers, and of vetoing proposed legislation, without legitimization by the democratically elected body is in violation of the aim of Article 3 of Protocol no. I to the European Convention on Human Rights.[26] This would create a real danger of placing Liechtenstein outside the community of European States, in particular outside the tradition of the Council of Europe, while it could hamper Liechtenstein's admission to the European Union. The primacy of the democratically elected *Landtag* in a system of separation of powers, and the supremacy of the democratically adopted Constitution and of the popular will, as expressed in both indirect and direct ways, would be weakened. The proposed possibility of a no-confidence motion by referendum would seem to enhance the democratic legitimization of the *Fürst* (Article 13ter). However, the initiative cannot be taken anonymously and is, therefore, not equal to democratic free elections. Moreover, the referendum is not binding; the final decision is in the hands of the *Fürstenhaus*.[27] The proposed Article 113, according to which a citizens initiative could lead to abrogation of the monarchy and the adoption of a republican constitution without a veto

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10, to the Commentary by Nowak. See also Batliner, *op. cit.* (note 12), p. 10, and Gerard Batliner, Andreas Kley & Herbert Wille, *Memorandum zur Frage der Vereinbarkeit des Entwurfs zur Abänderung der Verfassung des Fürstentums Liechtenstein gemäss der am 2. August 2002 bei der Regierung angemeldeten "Volksinitiative" des Landesfürsten und Erbprinzen mit den Regeln und Standards des Europarates und der EMRK*, 2002, p. 4: "Diese Loslösung von der staatlichen Hoheit ist gleichsam sektorieller Absolutismus".

[24] Batliner, *op. cit.* (note 12), p. 40, speaks of an "absolutismusnahe Text". He also points to the fact that the use of the power to enact emergency regulations is not restricted to the situations listed in Article 15 of the European Convention on Human Rights.

[25] Batliner, *op. cit.* (note 12), pp. 32-36 and 40-45; Batliner, Kley & Wille, *op. cit.* (note 23), pp. 14-16 and 19; Breitenmoser, *op. cit.* (note 7), pp. 129-130; Frowein, *op. cit.* (note 8), p.9; Funk, *op. cit.* (note 11), pp. 28-32; Rhinow, *op. cit.* (note 8), pp. 55-56 and 75. *Contra* Matscher, *op. cit.* (note 1), p. 24, who is of the opinion that the swifts made still leave the separation of powers in balance.

[26] Batliner, *op. cit.* (note 12), p. 46; Batliner, Kley & Wille, *op. cit.* (note 23), p. 6; Frowein, *op. cit.* (note 8), pp. 15-16; Rhinow, *op. cit.* (note 8), pp. 50-53. See also Antonio Pastor Ridruejo & Georg Ress, *Rapport sur la conformité de l'ordre juridique de la Principauté de Monaco avec les principes fundamentaux du Conseil de l'Europe*, AS/Bur/Monaco 1999 1 rév.1, § 167.

[27] See Batliner, *op. cit.* (note 12), pp. 11-12; Batliner, Kley & Wille, *op. cit.* (note 23), p. 20; Rhinow, *op. cit.* (note 8), pp. 87-89.

right for the *Fürst*, would be an extreme as *ultimum remedium* and not an effective remedy for the imbalanced separation of powers.[28]

Even if the proposals concerned were adopted according to the present constitutional procedures, and Liechtenstein thus exercised its right of internal self-determination and domestic jurisdiction, the outcome would not meet European standards as monitored by the separate organs of the Council of Europe.[29] Professor Matscher is correct in stating that there is, as of yet, no clearly defined European concept of democracy.[30] However, the whole tendency within, and indeed one of the main purposes of, the Council of Europe and the European Union is the promotion and strengthening of democracy and the Rule of Law in the European community of States. Some of the Central and Eastern European States are still involved in a process of progressively reaching the level of this part of the *"acquis européen"*.[31] In taking a step backwards on this road in the direction of monarchic rule,[32] Liechtenstein would not live up to its commitments undertaken when it joined that community.[33]

The proposals included in the Citizens Initiative for Constitutional Peace would not meet with the same objections, because the resulting separation of powers would be in a better balance, with a clear primacy of the *Landtag* and supremacy of the Constitution.

4. Rule of Law and the Independence of the Judiciary

As was said above, democracy and the Rule of Law are inextricably connected, especially within a European context.

The Rule of Law principle implies that all governmental and other public power within the State is governed by law. One of the principle instruments to guarantee the supremacy of the law is the system of judicial review of governmental action for its conformity with the law, including constitutional law and, depending on the scope of judicial review, for its conformity with international law. This review concerns in the first place conformity with the rules on separation of powers, with constitutional procedures and with basic human rights. It must be exercised by a constitutional and/or administrative and/or "ordinary" court that is fully independent from the government and other public bodies whose acts it has to review, and is fully impartial.[34] The immunity of the *Fürst* from any judicial review of his acts under proposed Article 7 would, in view of his legislative and administrative powers, weaken the system of judicial review; under some circumstances it could also result in a violation of Liechtenstein's obligation under Article 13 of the European Convention on Human Rights to provide an effective remedy.[35] The proposed abolishment of Article 112 concerning the jurisdiction of the Constitutional Court to interprete the Constitution and, by doing so, to give a final judgment on controversial constitutional issues outside the areas listed in Article 104,

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[28] See Batliner, *op. cit.* (note 12), p. 7: "Damit dürfte das Verfahren schon vor seiner Initiierung gestorben sein". See also Batliner, Kley & Wille, *op. cit.* (note 23), p. 21; Rhinow, *op. cit.* (note 8), pp. 98.

[29] See Breitenmoser, *op. cit.* (note 7), pp. 58-68.

[30] *Op. cit.* (note 1), p. 24.

[31] See Breitenmoser, *op. cit.* (note 7), pp. 64-68; Frowein, *op. cit.* (note 8), p. 1 and pp. 21-22.

[32] See Batliner, Kley & Wille,*op. cit.* (note 23), p. 8: "Der Fürst besitzt quasi die Kompetenzkompetenz".

[33] See Breitenmoser, *op. cit.* (note 7), pp. 20-21, 130 and 134-136; Rhinow, *op. cit.* (note 8), pp. 55-56.

[34] For the concept of independence and (subjective and objective) impartiality, see Article 6 of the European Convention on Human Rights, as interpreted and applied by the European Court of Human Rights in its case law.

[35] Batliner, *op. cit.* (note 12), pp. 49-50; Batliner, Kley & Wille, *op. cit.* (note 23), pp. 3-4. See also the judgment of the European Court of Human Rights of 28 October 1999, *Wille v. Liechtenstein*, § 77.

would amount to a reduction of the guarantees of the Rule of Law in favour of political compromises and, ultimately, in favour of the not democratically controlled powers of the *Fürst*.[36]

Although the independence and impartiality of a judge depends primarily on his or her attitude, and his or her action and inaction, during the handling of the case, during the hearing and in drafting the judgment, there must also be objective guarantees for independence, and any grounds for fear on the part of the parties in the case must be avoided. For both aspects, the appointment procedure of judges is of great importance. There would seem to be no common opinion yet about the most appropriate procedure.[37] For the legitimation of the administration of justice a certain involvement of democratically elected bodies like the *Landtag* may be desirable. However, the *Fürst* is not democratically elected. His involvement in the nomination procedure other than in a merely formal way, is problematic, especially if this involvement is of a decisive character. The proposed first paragraph of Article 96 provides that no candidate can be recommended to the *Landtag* for election without the consent of the *Fürst*. Especially in view of the powers the *Fürst* would have under the amended Constitution as proposed by him, his far-reaching involvement in the election procedure could amount to undue influence and could give rise to doubt about the objective independence and impartiality of the elected judge.[38] The fact that the *Fürst* himself is not subject to the jurisdiction of the courts does not change this;[39] his prestige, authority and factual influence may give reason to believe that a certain pressure may radiate from his involvement. Therefore, the proposed Article 96 would not sufficiently ensure respect for the right laid down in Article 6 of the European Convention on Human Rights and could therefore create problems with respect to Liechtenstein's obligation under Article 1 of that Convention. This situation is not adequately remedied by the provision in the second paragraph of Article 96 that, if a proposed candidate is not approved by the *Landtag*, the choice between the proposed candidate and any other candidate would be made by referendum, since a choice by the people would also not guarantee the impartiality of the elected candidate.[40] The proposed Article 107bis of the Citizens Initiative for Constitutional Peace would not give a decisive position to the *Fürst* in the nomination procedure.

The term of office of five years for the members of the administrative court, as proposed in Article 102, second paragraph, is a rather short one. From the point of view of independence, appointment of judges for life is to be preferred. As Professor Matscher points out in his opinion, so far, the Strasbourg Court has not found comparable provisions concerning terms of office to be in violation of Article 6.[41] However, the greater the political influence on the re-election procedure, the greater the risk that a short term of office may throw a shadow on the independent position of the judge concerned.[42]

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[36] Batliner, *op. cit.* (note 12), pp. 18-19 and 21-22; Batliner, Kley & Wille, *op. cit.* (note 23), p. 17; Frowein, *op. cit.* (note 8), pp. 25-26; Rhinow, *op. cit.* (note 8), p. 107.

[37] See Breitenmoser, *op. cit.* (note 7), p. 136; Rhinow, *op. cit.* (note 8), pp. 18-19.

[38] *Contra* Rhinow, *op. cit.* (note 8), pp. 120-121 and 123-125. The author admits, however, that the greater influence the *Fürst* would have on the nomination, the more this would weaken the democratic character of the procedure: *ibidem*, p. 129.

[39] Batliner, *op. cit.* (note 12), pp. 27-28.

[40] Breitenmoser, *op. cit.* (note 7), pp. 137-140; Frowein, *op. cit.* (note 8), p. 19.

[41] Matscher, *op. cit.* (note 1)*, p. 27. See also* Van Dijk & van Hoof, *op. cit.* (note 23), p. 452.

[42] Batliner, *op. cit.* (note 12), p. 27; Batliner, Kley & Wille, *op. cit.* (note 23), pp. 10-11. The facts which were put before the European Court of Human Rights in *Wille v. Liechtenstein*, judgment of 28 October 1999, show that this is not a theoretical issue.

5. Concluding Observation

The proposals of 2 August 2002 for amending the Liechtenstein Constitution would mean a step backwards on the road to effective democracy and the Rule of Law. This would in particular apply to the powers which the *Fürst* would have in the legislative and executive field without any democratic control or judicial review. Such a step backwards could lead to an isolation of Liechtenstein within the European Community of States, could make its membership of the Council of Europe problematic and could hinder its future admission to the European Union. Even if there is no generally accepted standard of democracy, not even in Europe, both the Council of Europe and the European Union do not allow the *"acquis européen"* to be diminished.