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REPORT

"CONSTITUTIONAL AMENDMENT IN LIECHTENSTEIN"

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GENERALITIES

The Constitution, within the system of the juridical structure of a country is intended to indicate the frame wherein the organization of the State in respect of Territory, Powers and Rights and Obligations of the Population is ruled.

This means that – in general – the Constitution is intended to be a monument of stability without, however, being completely static. Indeed, it would be against the interests of the country and its population, if the constitution would be absolutely not amendable and thus without any possibility to take into consideration new realities and circumstances.
On the other hand, the constitution should not be amended each time the political power changes and therefore most constitutions foresee a qualified procedure for the amendments or changes of the constitution.

Some Constitutions have even foreseen that one or several articles may not be changed at all; this is the case e.g. for the German Constitution (The Basic Law), where the Federal Structure and the competences of the national Member States are excluded from all possible amendments.

In Germany this has historical motivations.
The German Constitution excludes also the Human Rights from any amendment; the clause itself which forbids such changes, the so called “eternity clause” is also excluded from any possible amendment.

The interpretation of this eternity clause, however, is such, that it should not hinder the evolution of juridical life and especially constitutional life and – therefore – even this interdiction has not that absolute significance which it seems to have by its wording.
The Liechtenstein Constitution does not have a general or specific interdiction of amendments or changes.

PARTICULARITIES OF LIECHTENSTEIN

Before entering the subject a small remark about the country: Liechtenstein is a Principality located between Switzerland and Austria with a surface of about 160 square kilometres and around 33’000 inhabitants.

Liechtenstein is a constitutional hereditary monarchy on democratic and parliamentary basis and the power of the State is rooted with the Prince and the People. The sharing of the Power between the Prince on one hand and the People on the other hand under premises of democratic and parliamentary basis renders the Liechtenstein Constitution very specific.

The topics of the Liechtenstein Constitution are ruled in 12 main chapters which are about

- I. The Principality
- II. The rights of the Prince
- III. The duties of the State
- IV. The General rights and duties of the Citizens
- V. the Diet, or Parliament
- VI. The State’s Committee
- VII. The Government of the State
- VIII. the Courts
  - Ordinary Courts
  - Administrative Court

- o States Court or Constitutional Court
- IX. The Authorities and the State's officials
- X. The municipalities
- XI. The Constitutional Guarantee
- XII. And the Final Provisions

THE ORDINARY LEGISLATION PROCEDURE

Before talking about the amendments of the constitution, we shall have a look at the ordinary legislation procedure.

As in Liechtenstein the Power of Sovereignty is divided between the Prince and the People (acting mainly via the Parliament), both Exponents of the legislative power (the Prince and the People) have to closely cooperate in the legislation procedure. This is the core of a Monarchy on democratic and parliamentary basis. If they diverge in their opinion, no ordinary legislative procedure can be achieved.

The legislative procedure is somehow complicated by the fact that, even if the Parliament represents the People, the population has kept some rights of direct democracy and has the possibility to intervene – as we will see - directly in the legislation procedure.

Initiation of the Procedure

Whilst the **Prince** represents the one part of the Power in the State, the other part of the power lies with the People having direct democratic rights and represented by the **Parliament** (diet) which is the Organ of the totality of the People and is composed by 25 members.

The ordinary legislative process **can be started** by different ways:

The right to initiate [art 64 of the Constitution] a procedure of legislation (by introducing a project of law) lies with:

- the Prince (in form of a Governmental proposals)
- the Parliament itself
- and with the people in the way of legislative Initiatives.

Whilst the Prince acts, if he wants so, via the Government, where he can ask the government to prepare drafts of law in order to bring it to the Parliament, the Parliament itself can start a law procedure by its own initiative.
The People also have the right to bring draft laws to the Parliament by means of legislative initiatives. This may be done by

- 1'000 citizens

or at least

- 3 municipalities

No law may be issued without the cooperation of the Parliament [art. 65 of the Constitution] and all drafts of law must be dealt with by the Parliament in order to make them become law. Once a draft of a law is on the agenda of the Parliament, the ordinary law making procedure starts.

The Parliament has to have at least a **quorum of presence of 2/3** of its members and – for the adoption – the simple majority of the **present** members is requested.

When these majorities are reached and the Parliament has passed a law, the law needs to be **sanctioned by the Prince** in order to be valid [art. 9 of the const.]. This sanction must be given within 6 months; if not given within this time frame, the sanction is **deemed to be refused** and the law does not become valid. In the past it has happened that the sanction of a law passed by the parliament had been refused; this was the case for a hunting law which did concern very few persons and therefore the refusal of the sanction has passed without too much noise.

Each law, in order to become valid, needs (besides the Parliamentary decision and the sanction of the Prince) also to be countersigned by of the Head of Government or his Deputy and finally it needs to be published in the Law Publication.

Referendum

As another right of direct democracy, each law which is not declared by Parliament to be urgent, can be attacked by the way of a **referendum**, which is a **public vote against a law,** to be requested by at least 1'000 citizens or at least 3 municipalities within 30 days after the official publication.

AMENDMENTS TO THE CONSTITUTION

IN GENERAL

The Liechtenstein Constitution does not contain limitations to amendments or changes; it is amendable in each and every part of it. There are no restrictions whatsoever which would hinder an amendment or change.

However, in reality the particularity of the lawmaking procedure shows, that, without the cooperation of the two holders of power, i.e. the PRINCE and the PEOPLE via Parliament no law whatsoever passes. This means that each part, the PRINCE on one hand and the PARLIAMENT on the other hand can oppose to a change of the constitution if they are against it.

PROCEDURE OF AMENDMENT OF CONSTITUTION

Art. 112 of the Liechtenstein Constitution foresees the procedure of changes and amendments as follows:

The Government and the Parliament (and the People by way of the Right of Initiative) may introduce proposals to change or amend the Constitution.

However, from side of the Parliament such decisions require **the unanimity of all present members** with a quorum of presence of 2/3 of the members of Parliament,
or, if the unanimity is not reached,
then it needs in two consecutive meetings of parliament, a majority of ¾ (75%).

If the Parliament did not accept a draft brought in by popular initiative, then the proposal has to be submitted to a **popular vote** (art. 66, point 6 of the Constitution). When amendments or changes are submitted to popular vote and the proposal is accepted by the majority of the voters, the **sanction** of the **Prince** is **required** (as well as the countersignature of the Head of Government and the publication in the Law Publication in order to make the amendment become valid.

In **constitutional matters** however, the popular initiative require the signatures of **1'500 citizens** (instead of 1'000 for ordinary laws) or the request of at least **4 Municipalities** (instead of 3 Municipalities for ordinary laws).

Just to let you have an idea: If we consider a population of about 33'000, whereof about 1/3 are non-voting foreign citizens, and, deduction made of children, there would remain something around **12-14'000 voters**. The required signatures of 1'500 voters is therefore very high; and so is the number of 4 municipalities out of a total of 11 municipalities.

SPECIAL CASE OF CONSTITUTIONAL AMENDMENT:

THE ABOLISHMENT OF THE MONARCHY

1. In 2003 important changes of the constitution of 1921 have been made. Because there had been critics during the phase of discussions and negotiations of the proposed changes, and because the sanction of the Prince is required for all laws and, of course, also for changes of the constitution, the abolishment of the Monarchy has been set out as a **special case** of amendment of the constitution by art. 113 of the new Constitution:

2. At least 1'500 citizens have now the right to bring up an initiative for the abolishment of the Monarchy.

3. If such initiative is accepted by a popular vote, then the Parliament would have to elaborate a new constitution on republican basis; this draft of constitution has to be submitted to popular vote at the **earliest** after 1 year and at the **latest** after 2 years.
4. The Prince has the right to submit, for the same popular vote an own draft of a new constitution.

5. Then a specific procedure has to be followed:

5.1 In case that there is only one draft for a new constitution, the absolute majority in the popular vote is sufficient to accept the draft constitution.
5.2 If there are two drafts for a new constitution, then the voters have the possibility to choose between the (A) constitution in force and (B) the two draft constitutions.
There will be two turns of popular vote. The voters have – in the **first** turn – two votes. They can give these two votes to the constitution they wish to see in the second turn of the popular vote.
Those two alternatives which have taken the most first and second votes will be put for vote in the second turn.

6. In the second turn which takes place 14 days after the first vote, the voters have one single vote.

7. At the end, the alternative of Constitution which has reached the absolute majority is adopted respectively confirmed.

The complication of the procedure on one hand and the duration of the elaboration of the drafts render such amendments rather difficult but not impossible. The hereditary monarchy on democratic and parliamentary basis as a form of State is deeply anchored within the population in Liechtenstein and nowadays it is highly improbable that such an initiative might have a chance to succeed.

In small environments like in Liechtenstein with effectively 12 to 14'000 voters, the economic interdependence between persons, the blood relationship and normal friendship or personal animosity are undisclosed elements which render the functioning of a

democratic system very difficult should the Prince be replaced e.g. by a second chamber. In fact, the Prince constitutes a guarantee, not only of stability, but also of respect of the democratic principles.

CONTROL BY THE CONSTITUTIONAL COURT OVER AMENDMENTS OF THE CONSTITUTION

Now, the question is whether there might be a control of the Constitutional Court over the amendments proposed or decided.

ROLE OF THE CONSTITUTIONAL COURT BEFORE 2003

In the Constitution before the amendment of 2003, the Constitutional Court had no possibility to control the constitution itself or amendments thereto. However, if there was a problem in the interpretation of the Constitutional text, and here we speak about the text which is in force, the Constitutional Court could decide how to interpret the Constitution, under the condition that the Government and the Parliament were not able themselves to agree on an interpretation.

The term “Government” seems to be very clear and simple but in reality it is an **ambiguous** wording full of possible interpretations.

The **final and predominant interpretation of the term “Government” in this context** would be that “Government” does not mean the executive government, but the **Prince** or **Monarch**, in opposition to the People and the Parliament.

The discussion about the interpretation of this constitutional text in 2002 and 2003 lead to important emotional interventions and, finally, in the version of the Constitution adopted in 2003, both,

- as well the competence of the Constitutional court to interpret the text, if **no agreement** between the Prince and the Parliament was found

- and the possibility of the “Government” and the Parliament to agree on an interpretation have been abolished.

The present constitution gives no power at all to the Constitutional Court to control the text of the Constitution or of amendments to the Constitution.