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(VENICE COMMISSION)

DRAFT OPINION

ON THE AMENDMENTS TO THE CONSTITUTION OF LIECHTENSTEIN PROPOSED BY THE PRINCELY HOUSE OF LIECHTENSTEIN

on the basis of comments by

Mr H. Zahle, (Member, Denmark)
Mr P. Van Dijk, (Member, the Netherlands)
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I. Introduction

1. At its meeting on 6 November 2002 the Bureau of the Parliamentary Assembly agreed to ask the Venice Commission to provide an opinion on the conformity of the proposed revision of the Constitution of Liechtenstein with the fundamental principles of the Council of Europe. At present there are two proposals for a revision of the Constitution of Liechtenstein: one from the Princely House and the other made by a "Citizens' Initiative for Constitutional Peace"[1]. The amendments proposed in the initiative from the Princely House appear in document CDL (2002) 145 and are incorporated into the text of the Constitution. The amendments proposed by the Citizens' Initiative appear in the same document as footnotes to the respective articles of the Constitution.

2. Signatures are being collected for both initiatives until 12 December 2002. If a sufficient number of signatures is collected for one or both initiatives, the Diet[2] of Liechtenstein will decide on whether to adopt one of the proposals or submit them to a referendum.

3. The present draft opinion is based on the comments made by the rapporteurs of the Commission. The comments by Professor Pieter van Dijk (Netherlands) appear in document CDL(2002)140, the comments by Professor Henrik Zahle (Denmark) appear in document CDL(2002)149 and the comments by Professor Jean-Claude Scholsem (Belgium) in document CDL(2002)151. Both the draft opinion and the individual comments focus on the initiative from the Princely House since the proposal by the Citizens' Initiative does not raise any problems as to its compatibility with Council of Europe standards. The present draft opinion does not address all amendments but only amendments which may be considered problematic from the point of view of European standards.

II. Main Elements of the Proposal from the Princely House

4. The proposed constitutional amendments would substantially strengthen the powers of the Prince Regnant and the Princely House. Thus, if the Government loses the confidence of the Prince Regnant, it loses the power to exercise its functions even if it still enjoys the confidence of the Diet, and the Prince Regnant may appoint an interim government (Art. 80.1). The Prince Regnant may dismiss, in agreement with the Diet, members of Government who no longer enjoy his confidence (Art. 80.2). The Prince Regnant would have the power to veto any bill by not giving his assent within six months (Art. 65.1). No constitutional amendments, with the exception of the abolition of the monarchy, could be adopted without the approval of the Prince Regnant (Art. 112.2). The Princely House would have the power to adopt and amend the Law on the Princely House[3] which regulates succession to the throne and related matters (Art. 3). This law would, according to the Explanatory Memorandum, not even be subordinate to the Constitution. Furthermore, the Prince Regnant would have the power to adopt emergency regulations by which the applicability of individual constitutional provisions may be limited (Art. 10).

5. Against the background of these powers, the proposed Article 7 which would grant the Prince Regnant full immunity without him being subject to any control by the Diet

[1] "Volksinitiative für Verfassungsfrieden"
[2] Landtag
[3] Hausgesetz

(Article 63) is of particular significance. No substitute is provided in the form of responsibility of the government for decisions and acts of the Prince Regnant. By popular initiative lack of confidence might be expressed vis-à-vis the Prince Regnant, but the Princely House would have the final say as to what consequences this should have (Article 13ter). Ultimately, however, the monarchy could be abolished by referendum (Article 113).

III. European Standards of Democracy and the Rule of Law

6. 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 representative and pluralistic democracy. General international law, as it stands, does not prescribe a democratic form of government. However, in Europe democracy is the only accepted form of government. It is a condition for membership in the Council of Europe and the European Union and is presented as "the only system of government of our nations" in the 1990 OSCE Charter of Paris for a new Europe.

7. Definition of the precise content of the notion of democracy is made difficult by the fact that Council of Europe legal instruments are mainly concerned with individual rights and freedoms and mostly address the structure and division of constitutional powers only indirectly. Council of Europe treaties do not contain a comprehensive regulation of the democratic state. Indeed, individual rights and freedoms may also be protected in a non-democratic system. This is not only a theoretical possibility but examples may be found in European history. Such a system has preceded some of the later European democracies and was called, especially in Norwegian history, "opinion governed monarchy".

8. Nevertheless there is a strong and close link between the protection of human rights and democratic government. This link is established by the following considerations:

- Some individual rights do not make sense if they are not connected with democratic government. In other words, they imply democracy. This is true as regards free elections. These are regulated in Art. 3 of the First Protocol to the European Convention of Human Rights, which contains the obligation to hold regular free elections. Elections are the basis for a parliamentary assembly, and free elections result in what should be not only a pluralistic parliament, representing or reflecting the opinions of the voters, but an effective parliament which decides on political matters with no internal political interference from other political bodies.

- Democracy is the recognised system of government in which individual rights can be enjoyed effectively. In the preamble to the Statute of the Council of Europe, individual freedom, political liberty and the rule of law are defined as a common heritage. From subsequent Council of Europe legal documents, and from legal practice it ensues that democracy is thereby located at the top of a model with rights and freedoms (and rule of law) as its basis. This is especially reflected in the fourth paragraph of the preamble to the European Convention of Human Rights in which the Governments signatory to the Convention are "reaffirming their profound belief in those fundamental freedoms which are … best maintained by an effective political democracy …".

- The same concept of democracy as a guarantee for the protection of rights and freedoms is at the basis of the exceptions to Arts. 8, 10-11 etc. where "democracy" is mentioned. Human rights may be restricted if *inter alia* such a restriction can be considered necessary in a democratic society. This expression might be interpreted as something to be distinguished from what would be necessary in a *non-democratic* system of government and the latter type of necessity should then not be recognised. But this way of understanding these exceptions is not in harmony with the context of the regulations. It is not to be expected that the freedoms and rights are to be applied in a non-democratic society, and there is therefore no need for specific regulation in non-democratic societies. The connection between the exception and democracy is to be interpreted in another way: only such restrictions as contribute to upholding the very democratic system in which the freedoms and rights are (otherwise) best effectuated are legitimate.

- The link between democracy and fundamental rights and freedoms is confirmed by their strong correlation in practice. Democracies tend to try to respect human rights, few non-democratic States do.

IV. The Common Constitutional Heritage of the Monarchies Members of the Council of Europe

9. As regards more precisely the basic tension between the monarchic principle and the democratic principle, the monarchies in the member States of the Council of Europe have all been reformed in a way making them compatible with democratic principles. It has to be regarded as part of the European constitutional heritage that, where monarchies exist, the power of the monarch is regulated in a way which avoids a conflict with the democratic principle. European monarchs do not have wide political powers and the tendency, after the establishment of the Council of Europe, has been to further reduce their powers.

10. The European monarchies members of the Council of Europe all respect a number of common democratic principles:

- 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 referendums 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.[4] The same holds true for participation in procedures of referendums 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 pluralistic democracy that the primacy of power rests with the representative and democratically elected body.

[4] 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.

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 true 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 legitimisation on the confidence of the democratically elected body.

- In the Council of Europe member States democracy is inseparable from the Rule of Law. Apart from judicial review 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.

11. The Commission therefore will examine the proposals from the Princely House as to their compatibility with these principles, using as a reference practice in other European monarchies who are members of the Council of Europe. These monarchies have basically used two techniques to make the monarchy compatible with democratic principles. Either the monarch has been excluded from the exercise of public powers since he does not derive his position from the people. His main function is symbolic, representing the nation. This is basically the approach in Sweden since the constitutional change in 1974. This is clearly not the approach of the present Constitution of Liechtenstein (cf. Art. 2).

12. More relevant is therefore the approach of other European countries where the participation by the monarch in the exercise of public power is largely formal. Powers assigned to the monarch in the text of the Constitution are reinterpreted so that the authority attributed to *the Monarch* is understood as a conferment of authority to *the government*. According to the constitutional text the monarch takes part in law making, and the constitutional text conferring that authority to the monarch is unchanged. But the function of the monarch – especially the necessity of royal sanction of the bills voted for by the majority of the parliament – is considered a formality. The monarch's sanction is obligatory, if the sanction is recommended by the parliamentary government.

13. In Denmark legislative power is conferred to the "King and the Parliament", (Art. 3 Constitution 1953), and the bills voted for by the parliament have to be sanctioned by the king to become law, (Art. 22). According to the text of the Constitution the King has an unlimited power of veto, and this power was originally, that is in 1849 when the Constitution was introduced, a constitutional and political reality. But the political influence of the King has of course declined in connection with the introduction of a parliamentary system of government, and in the latest textbooks on constitutional law it is assumed that the King has no authority to deny his sanction to a bill voted for by the majority of Parliament.[5] Similarly other constitutional powers conferred to the King, e.g. treaty-making powers (Art. 19), give no room for royal influence.

14. The Norwegian constitution (1814) characterises its system of government as "limited and hereditary monarchical", (Art. 1). Royal power – which was to be exercised in collaboration with the Parliament – is regulated in several, still valid constitutional articles. "It was the supposition of the constitution that the authority which the constitution conferred

[5] Peter Germer: Dansk Statsforfatningsret 2001 p. 72 note 46, Henrik Zahle: Dansk Forfatningsret, vol. 1, 2001 p. 301

to the King, should be exercised *by him personally* in complete independence".[6] But the political and constitutional situation has changed: " … the King has stopped being a political power", a fact which has increased "his ability to stand as symbol of the unity of the nation and the authority of the state".[7] When Art. 3, for example, confers executive power to the King, it is in reality a power conferred to the government.[8]

15 The Constitution of the Netherlands provides in Article 42 that the King and the ministers together constitute the government. The King is inviolable, while the ministers are responsible. Article 81 defines legislative power as a common power of both the government and the two Chambers of Parliament. Article 87 stipulates in its first paragraph that a Bill will become law after having been adopted by the two Chambers of parliament and sanctioned by the King. Read in conjunction these provisions imply that the King acts under ministerial responsibility, including when he sanctions a proposed law. The latter finds expression in the countersignature by the minister concerned. Should the King refuse to sanction a proposed law or delay his assent, this would also be covered by ministerial responsibility.

16. The Constitution of Belgium seems particularly important in this respect. From its origin in 1831 it has been considered as the prototype of the constitutional monarchy, transposing the British customary constitution into a written text. It has therefore served in the 19th and early 20th century as a model for many countries wishing to establish a constitutional monarchy. In the Belgian Constitution the principle of countersignature is absolute and without exception. Under the terms of its Art. 106: "No actions of the King may take effect without the countersignature of a minister, who, in doing so takes responsibility upon himself".

V. The Individual Amendments Proposed by the Princely House

Dismissal of the Government or of Members of Government by the Prince Regnant (Art. 80)

17. According to the proposal for a revision of Art. 80 made by the Princely House, the Government loses the power to exercise its functions if it loses the confidence of the Prince even if it still enjoys the confidence of the Diet. In that case the Prince would appoint an interim government, which could govern up to four months before submitting itself to a vote of confidence in the Diet. This proposal is in flat contradiction with the principle of representation and the requirement of countersignature. Under this requirement the Prince Regnant is not supposed to pursue his own personal policy but his acts have to be confirmed at any moment by a minister directly responsible before a parliamentary assembly. This amendment would be a step back towards a rather anachronistic constitutional situation as it existed before the establishment of constitutional monarchies in Europe.

18. To take an example, the Constitution of Belgium provides in Art. 96 that the King appoints and dismisses the ministers. This rule has however to be read together with the requirement of countersignature and all such acts have to be countersigned by the (outgoing) Prime Minister. While the King had some personal influence on the composition of the government in the 19th and early 20th century, this influence has waned. A ministerial candidate has to be immediately approved by a majority in parliament. The role of the King is

[6] Johs. Andenæs: Statsforfatningen i Norge 1986 p. 162
[7] Andenæs p. 162
[8] Andenæs p. 267

limited to the role of facilitator; he does not exercise any personal preference, but looks for the proposal most likely to receive the acceptance of Parliament. Legally all his acts have to be covered by countersignature. The proposal by the Princely House reintroduces the notion of the confidence of the Prince Regnant acting on a personal basis instead of the "objective" notion of confidence of the monarch based on the parliamentary support for the government. This would be a serious step backwards. In Belgium the King has not been able, on his own initiative, to dismiss a government since 1831. In the Nordic countries his influence is also very weak.

19. Similar considerations apply to the proposal concerning individual ministers in the second paragraph of Article 80. The proposal would violate the principle of governmental solidarity. The head of government should take responsibility before Parliament for the dismissal of a minister.

The Sanctioning of Laws by the Prince Regnant (Art. 65.1)

20. According to the proposal from the Princely House, the simple fact that the Prince Regnant has not given within six months his assent to a law adopted by the Diet, is equivalent to a veto. Inaction alone, which by its nature is not subject to countersignature, would be sufficient for a legislative veto.

21. In other monarchies in Council of Europe member states, the monarch cannot refuse on a personal basis to sanction a law. If Art. 109 of the Belgian Constitution, unchanged since 1831, provides "The King sanctions and promulgates laws", this has to be put into context. Only in exceptional cases the King and the government together may refuse to sanction a law. A personal refusal of the King to sanction a law has happened only once in Belgian history when King Baudoin refused to sanction the law partly depenalising abortion. The procedure followed at the time confirms that the King is obliged to sanction laws adopted by parliament. When King Baudoin on a personal basis refused to sanction this law, he invited at the same time the government to find a "legal solution compatible with the proper functioning of parliamentary democracy" (letter by King Baudoin to the Prime Minister). The solution was to declare the King temporarily unable to reign, thereby implying *e contrario* that the function of reigning obliges him to sanction the laws. To remedy the incapacity of the sovereign to reign the law was then sanctioned and promulgated by all ministers, meeting as the Council of Ministers. Any other solution would have led to a crisis of exceptional seriousness for the Belgian monarchy. The result is obvious: if it has ever been possible in Belgium to exercise a royal veto on a personal basis, this possibility no longer exists[9].

22. The proposal by the Princely House does not concern only ordinary laws but Art. 112 requires the assent of the Prince for constitutional amendments, with the exception of the procedure to abolish the monarchy. This would mean that a single person could exercise a veto at the highest level of the hierarchy of norms without any direct or indirect responsibility vis-à-vis the representatives of the people. This is in flagrant contradiction with the sovereignty of the people and democracy.

[9] R. LALLEMAND, La conscience royale et la représentation de la Nation, Journal des tribunaux, 1990, p 467, F. DELPEREE, Le Roi sanctionne les lois, Journal des tribunaux, 1990, p 594; J. STENGERS, Evolution historique de la royauté en Belgique: modèle ou imitation de l'évolution européenne, Res Publica, 1991, p 102

23. As explained above[10] the right to free elections implies that the parliament to be elected must be an effective parliament exercising its powers independently. It may well be argued therefore that the possibility of exercising important legislative and executive powers, and of vetoing proposed legislation, without direct or indirect legitimisation by a democratically elected body, violates the aim of Article 3 of Protocol no. I to the European Convention on Human Rights.[11] Moreover, it conflicts with the common constitutional heritage of European monarchies. By contrast, the proposal by the Citizens' Initiative for Constitutional Peace to introduce the possibility of a referendum in the case of a princely veto would not meet with any objections.

The Immunity of the Prince Regnant

24. According to the proposal from the Princely House the present traditional wording of Art. 7 that the person of the Prince Regnant is sacred and inviolable is replaced by "The Prince Regnant is not subject to the jurisdiction of the courts and does not have legal responsibility". When this wording– and indeed by what is does not say rather than by what it says – is read in connection with other amendments giving the Prince Regnant substantive constitutional powers it raises serious concerns as to its compatibility with the rule of law.

25. In constitutional monarchies the immunity of the Prince is linked to ministerial countersignature. The Belgian Constitution provides in Art. 88 "The King's person is inviolable; his ministers are responsible". The Constitution of the Netherlands contains a similar provision in the second paragraph of Article 42. This wording ensures that at any moment a public authority can be identified that is responsible for the acts of the King. No such formula is contained in the proposed amendments to the Constitution of Liechtenstein. Without such a formula immunity cannot however be justified in democratic terms and under the Rule of Law. This is of particular concern in view of the administrative and political powers of the Prince and may lead to violations of the obligations of Liechtenstein under Art. 13 of the European Convention for Human Rights. The judgment of the European Court of Human Rights of 28 October 1999 in the case *Wille v. Liechtenstein* shows that this is not merely a theoretical risk.

Abrogation of the Possibility for the State Court to Interpret the Constitution in case of Doubts

26. The initiative from the Princely House abolishes the present Article 112 enabling the State Court to interpret the Constitution in case of doubts which cannot be resolved by agreement between the Government and the Diet. It may be linked to the amendment of the previous article introducing the requirement of the assent of the Prince Regnant for any binding interpretation of the Constitution. In a system where public power is exercised by very different actors with different legitimacy, the interpretative role of the constitutional court to resolve disputes between these actors would seem particularly significant. To abolish this possibility would amount to a reduction of the guarantees of the Rule of Law in favour of

[10] *Supra*, at 8.
[11] See for example Antonio Pastor Ridruejo & Georg Ress, *Rapport sur la conformité de l'ordre juridique de la Principauté de Monaco avec les principes fondamentaux du Conseil de l'Europe*, AS/Bur/Monaco 1999 1 rév.1, § 167.

political compromises and, ultimately, in favour of the powers of the Prince Regnant which are not democratically controlled.

No Parliamentary Control of the Prince Regnant (Art. 63.1)

27. According to the proposed amendment to Art. 63 the right of control of the Diet does not extend to the functions assigned to the Prince Regnant. Since the Constitution does not ensure ministerial responsibility for the acts of the Prince Regnant this means that important decisions taken in the exercise of public power are not subject to any democratic control.

Appointment of Judges (Art. 96 et seq.)

28. 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 suspecting a lack of judicial independence 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. For the legitimacy of the administration of justice a certain involvement of democratically elected bodies like the Diet may be desirable. However, the Prince Regnant 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.

29. The proposed first paragraph of Article 96 provides that no candidate can be recommended to the Diet for election without the consent of the Prince Regnant. 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. The fact that the Prince Regnant himself is not subject to the jurisdiction of the courts does not change this; 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 guarantees 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 Diet, 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. By contrast, the proposed Article 107bis of the "Citizen's Initiative for Constitutional Peace" would not give a decisive position to the Prince Regnant in the nomination procedure.

30. 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. It is true that so far the Strasbourg Court has not found comparable provisions concerning terms of office to be in violation of Article 6. 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. There again, 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.

Emergency Decrees (Art. 10)

31. The rule on emergency situations in the present Constitution, which reads that “In urgent cases he[12] shall take the necessary measures for the security and welfare of the state” is far too imprecise. In a text dating from 1921 this is not astonishing. However, if a revision of the Constitution is undertaken, and especially if it concerns this Article, the conditions for an emergency situation must be clearly defined and the decrees of the Prince must be countersigned by a Minister. Both aspects are addressed in the proposal from the Citizens' Initiative for Constitutional Peace but not in the proposal from the Princely House.

The Law on the Princely House (Art. 3)

32. According to the revised Art. 3 proposed by the Princely House the Princely House itself may, without the involvement of the Diet, regulate by law issues such as the succession to the throne. Amendments to the Constitution could not amend this law. This proposed rule is astonishing. Succession to the throne is an essential element in any constitutional monarchy and has to be regulated by the Constitution.

Popular Initiative for a Motion of No Confidence against the Prince Regnant (Art. 13ter)

33. According to the proposed Art. 13ter not fewer than 1500 citizens can launch a motion of no confidence in the Prince Regnant. This proposal contradicts the logic of a constitutional monarchy which is characterized by stability and the sacrosanct position of the monarch due to his inability to act alone. If such a motion can be envisaged in the proposal from the Princely House, this is precisely because the Prince Regnant exercises powers on a personal basis. The proposal is however insufficient to provide a democratic legitimacy for the Prince. The initiative cannot be taken anonymously and is therefore not equivalent to democratic free elections. Moreover, the referendum taking place following the initiative would not be binding but the final decision would be taken by the members of the Princely House in accordance with the Law on the Princely House.

Initiative to Abolish the Monarchy (Art. 113)

34. Art. 113 as proposed by the Princely House would introduce an initiative to abolish the monarchy followed by a referendum. The mere possibility of such a referendum would not change the fact that before the possible success of such a referendum the constitutional system would be a monarchy characterized by excessive personal powers of the Prince Regnant. It would only provide a final remedy for an extreme situation but not an effective counterweight to the lack of balance in the distribution of powers.

[12] I.e. the Prince Regnant

VI. A Separate Issue: the Right of Secession of Municipalities

35. According to the proposal from the Princely House for a new section 2 of Art. 4, each municipality would have the right to secede from the state following a referendum. This proposed right to secede cannot be seen as the incorporation into the Liechtenstein Constitution of the internationally recognised right of (political) self-determination, if only for the reason that the individual municipalities of the Principality 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. 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 municipality as a separate State or, as the case may be, the consent of the State which the municipality wishes to join, the issue of State succession *etcetera*. 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.

36. The fact that a minority of the population of the municipality could have to face the situation where their municipality 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, albeit 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 municipality within the Principality to avoid 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.

37. It could be argued that, by a majority decision of the municipality 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. It is obvious that any secession, in particular in the case of certain municipalities, would have very serious consequences for Liechtenstein. However, if the newly proposed Constitution, including the procedure for secession here at issue, were adopted by the prescribed democratic procedure, the (majority of the) citizenship of Liechtenstein would exercise its right of (political) self-determination. Moreover, that majority may afterwards exercise the right to change the Constitution, including the proposed Article 4.2.

38. 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 a new, even smaller State, would seem to be inappropriate and undesirable, and give cause for critical reactions from that international community. 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 Principality and of any third State involved.

VII. Conclusions

39. The present Constitution of Liechtenstein dating from 1921 already provides for a fairly strong position of the monarch, stronger than is the practice in other European monarchies members of the Council of Europe. However, the experience of these monarchies shows that this is not necessarily an obstacle to the development of a constitutional monarchy fully respecting democratic principles and the rule of law. The Constitution therefore was not considered an obstacle to accession to the Council of Europe in 1978.

40. By contrast, the present proposal from the Princely House would present a decisive shift with respect to the present Constitution. It would not only prevent the further development of constitutional practice in Liechtenstein towards a fully-fledged constitutional monarchy as in other European countries, but even constitute a serious step backward. Its basic logic is not based on a monarch representing the state or nation and thereby being removed from political affiliations or controversies but on a monarch exercising personal discretionary power. This applies in particular to the powers exercised by the Prince Regnant 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 and make its membership of the Council of Europe problematic. 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.