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Bureau of the Assembly

Ad Hoc Committee on the dialogue with the Parliament of Liechtenstein

Report

Prepared by the Chairperson, Mr Marcel Glesener (Luxembourg, EPP/CD), on behalf of the ad hoc committee

I. General mandate of the ad hoc committee

1. The general mandate of the ad hoc committee was agreed by the Bureau on 23 November 2004 as follows:

"The aim of the dialogue is to study with the Parliament of Liechtenstein the constitutional and political practices in the country after the entry into force of the new Constitution. The aim of the dialogue is not to discuss the Constitution itself or the way it was amended" (see AS/Bur (2004) 85, paragraph 10 a., and AS/Bur/AhL (2005) 2). The mandate of the ad hoc committee was therefore a forward-looking one based on constructive and open co-operation.

2. This mandate and the setting-up of the ad hoc committee were ratified by the Assembly via the Progress Report both in January 2005 and 2006. In general, the members of the ad hoc committee, while conscious of the framework of the mandate, felt that it allowed them to consider the relevant aspects of the Constitution in Liechtenstein. Nevertheless, some members considered that it was too restrictive and impeded the work of the committee. The latter therefore encouraged the Bureau to possibly revise the mandate with a view to it being more encompassing (see paragraph 8 and conclusions below).

II. Background and working documents

3. Certain basic background documents had been drawn up in the past in this context within the Council of Europe. The relevant and important documents used by the ad hoc committee were the following (in reverse chronological order):

- Opinion for the Bureau by the co-rapporteurs of the Monitoring Committee, MM Hancock and Jurgens (AS/Mon (2003) 29 rev. 1), 16 September 2003;
- Statement by Mrs Renate Wohlwend, Head of the Liechtenstein delegation, 12 and 23 September 2003;
- Statement by the Government of Liechtenstein, Doc. 9667, 21 January 2003;
- Opinion of the Venice Commission on the amendments to the Constitution of Liechtenstein on the basis of comments by MM Zahle, van Dijk and Scholsem, CDL-AD (2002) 32, 16 December 2002;

- Constitution of the Principality of Liechtenstein, incorporating proposed amendments, Doc. 9661 Addendum, 27 November 2002;
- Case of *Wille v. Liechtenstein,* European Court of Human Rights, 28 October 1999.

In addition, the parliamentarians and the NGOs from Liechtenstein submitted working documents for the attention of the ad hoc committee.

III. Guidelines for the content of the dialogue

4. On the basis of the general mandate and the above background documents, the following were non-exhaustive guidelines for the content of the dialogue used by the participants:

- **A. Content and importance of the principle of "constitutional dualism" in the constitutional practice of Liechtenstein,** i.e. the constitutional legitimacy depending on the dualism of the Prince and the people;

- **B. Constitutional and political practices in Liechtenstein since the reform of the 1921 Constitution on 14 August 2003,** in particular as regards:

  i. Appointment of judges (Article 96 of the Constitution);
  ii. Sanctioning by the Prince of laws (Article 65.1);
  iii. Immunity of the Prince for public acts (Articles 7 and 85);
  iv. Emergency powers of the Prince (Article 10);
  v. Dismissal of the government or of individual members (Article 80);
  vi. Referendum on the "For Life" popular initiative to modify Articles 14 and 27 of the Constitution.

IV. Participants

5. Throughout the dialogue the participants remained relatively stable. The dialogue was between parliamentarians, on the one hand from the Assembly and on the other hand from the Parliament of Liechtenstein (*Landtag).* It was open to representatives of non-governmental organisations and of the civil society (see appended list of participants). The Government and the Prince were kept informed of the dialogue through the President of Parliament.

6. Concerning the use of the term the "Prince" (currently Hans Adam II), for the purposes of this report it should be understood as covering also the "Crown Prince" (Alois) since the latter had been granted all relevant constitutional powers in this context by Prince Hans Adam since the summer of 2004.

V. Meetings

7. The ad hoc committee held four meetings between April 2005 and March 2006, mainly in Strasbourg during an Assembly's Part-Session and one in Paris (March 2006). In addition, it held one meeting in Vaduz (Liechtenstein) from 26-27 September 2005 and one in Strasbourg from 24-26 January 2006 when it met the participants of the dialogue. The ad hoc committee wishes to thank the parliamentary authorities for their co-operation and hospitality during their stay in Liechtenstein and also wishes to thank all participants for the constructive and open atmosphere in which the dialogue was conducted.

VI. Content and importance of the principle of "constitutional dualism" in the constitutional practice of Liechtenstein

(a) General issues relating to "constitutional monarchies"

8. While conscious of the mandate of the ad hoc committee, all participants agreed that a basic understanding of the Constitution in Liechtenstein was necessary in order to comprehend the constitutional and political practices in Liechtenstein today. The members of the ad hoc committee therefore considered that the mandate did not restrict them from raising issues related to the Constitution in general or to articles which were not amended in 2003. Furthermore, the dialogue on this issue had as its starting point the evolution of constitutional monarchies in Europe and the compatibility of such a system with Council of Europe norms relating to parliamentary democracy and the rule of law.

9. All participants agreed that in a parliamentary democracy, which was a condition for membership of the Council of Europe, the principle of "checks and balances" was important, including the separation of powers. Different systems existed in Europe which were compatible with the principle of parliamentary democracy: direct democracy, representative democracy and constitutional monarchy. Certain countries had elements of all three; Liechtenstein considered itself a constitutional monarchy marked by strong elements of direct democracy, in particular referendums.

10. The evolution of constitutional monarchies in Europe since the 19th Century was that government depended increasingly on the people and less on the monarch. Political powers were removed from the monarch who retained only formal powers. As a result, in practice, the monarch was no longer allowed to apply literally certain powers specified in the Constitution or allowed to write the "speech from the throne". Instead, the monarch was in effect only carrying out the decisions or the programme of the government elected by the people. [1]

(b) Constitutional dualism as practiced in Liechtenstein

11. The concept of "dualism" in Liechtenstein consisted of three elements:

- the power of the State, which was indivisible as such, was jointly vested in the Prince and the People (Art. 2 of the Constitution);
- the Constitution assigned the competences serving the exercise of the power of the State to the Prince as Head of State and to Parliament as the representative organ of the People, so that the powers of both were roughly balanced;
- in addition to the competences assigned separately to each, the Constitution specified that the most important affairs of State had to be exercised by the Prince and the Parliament by consensus, in order to ensure this balance.

12. There was some disagreement within the participants of the dialogue whether a rough balance existed in Liechtenstein between the Prince as Head of State and Parliament as the representative organ of the people. However, all agreed that the formation of "consensus" was important in such a small country in all spheres of life, be it political, economic, social or cultural.

13. In this context, several members of the ad hoc committee viewed critically the lack of transparency of the information on relations between the Prince, the Government, Parliament and the people. This applied for example to the so-called "Monday morning" meetings between the Prince and the Head of Government on which no information (agenda, minutes) was available but also more generally to freedom of the media, with a lack of a wide range of independent media.

14. The ad hoc committee also dealt with the argument that since Liechtenstein had been admitted to the Council of Europe in 1978 when constitutional dualism and the 1921 Constitution had already existed, this concept and the Constitution were therefore compatible with Council of Europe standards. A majority considered that the content of the standards of the Council had been further elaborated and made more precise since 1978, especially due to the enlargement process. It was therefore legitimate, and had happened in several cases, for the Council of Europe to request member States to make changes to their Constitution even after accession.

15. For some members of the ad hoc committee, an important aspect of the constitutional dualism practiced in Liechtenstein was that many matters related to the Prince and his family were regulated by an autonomous agreement called the "Law on the Princely House". The Princely House consisted of some hundred family members based on birth or marriage. The Law on the Princely House regulated such matters as the hereditary succession, marriage, adoption, disciplinary measures against members, the right to vote in family matters and the setting-up of a "Family Council". Several members viewed critically that in a constitutional hereditary monarchy (i.e. with a non-elected Head of State), such important matters were not regulated by the Constitution but by an internal agreement, although published in the official gazette in which laws were promulgated. In addition, they considered that some of the rules and regulations of the Princely House constituted discrimination against female members.

[1] For a description of the common constitutional heritage of the monarchies members of the Council of Europe, see pp. 4-6 of the Opinion of the Venice Commission cited above.

16. The ad hoc committee also examined the general evolution of the exercise of power by successive Princes. There was a general recognition by all participants that in recent history, none of the Princes had wanted to be mere figure-heads ("Kein Grüss-August") and that the actual exercise of powers, or the impression given of it, also depended on the personality of the Prince. In this context, the Prince had made pronouncements or taken initiatives sometimes in his public capacity as Head of State and sometimes in his private capacity as a citizen. Several members of the ad hoc committee considered this a difficult distinction to be made in practice, both for the citizens of Liechtenstein and outside observers. Also relevant in this context was the fact that the Prince and his family had great economic power in a small country due to their public and private wealth.

VII. Constitutional and political practices in Liechtenstein since the reform of the 1921 Constitution on 14 August 2003

a. Appointment of judges (Article 96).

17. The participants agreed that the main concrete changes in the constitutional practices of Liechtenstein since August 2003 had occurred in this field, although the new procedure had been applied only once. Previously, persons standing for the highest judicial offices were "pre-nominated" by the political parties, which had the power to make proposals according to their political balance. These proposals were then submitted to the Prince who made the appointments. In practice, this had meant that the two largest political parties had shared the nominations.

18. Since August 2003, most participants agreed that there has been a positive development in that the selection process has been "de-politicised". According to Article 96, a selection commission was instituted to make a recommendation to the Parliament, with the appointment being made by the Prince. The same participants also agreed that the key aspect of this process was the membership of the selection commission and how they operated to make a recommendation.

19. The commission was chaired by the Prince. The Parliament appointed three members, one for each electoral group. The Prince similarly appointed three members. The eighth member was appointed by the Government (currently the Prime Minister). The Prince had a casting vote and a "veto" power in that the commission may only recommend a candidate with the Prince's assent.

20. Some members emphasised the equitable nature of the commission and the role of the Parliament once a recommendation was made to it. If the Parliament chose the recommended candidate, the person had to be appointed by the Prince. If the Parliament rejected a recommended candidate and no agreement was found on a different one, the Parliament had to propose its own candidate whose name was submitted for popular referendum. The candidate receiving an absolute majority in the referendum had to be appointed by the Prince. They also pointed out that the case of *Wille v. Liechtenstein*, under which Liechtenstein had been condemned by the European Court of Human Rights because the Prince had not re-appointed the President of the Administrative Court, could not happen under the new provisions.

21. Other members of the ad hoc committee emphasised the informal and opaque manner in which the commission operated and the preponderance of the Prince who intervened informally at a very early stage. The deliberations of the commission had to remain confidential. The three members of the commission appointed by the Prince and his representative agreed on a candidate before the deliberations started. Furthermore, as the number of members was an even one, the casting vote by the Prince acquired importance, coupled with the veto right. In practice, the Prince had not yet used these rights, but he could and would use them, thus giving them a "preventative" character. In addition, as even re-appointments had to be submitted to this commission, it was possible that for candidates who encountered the displeasure of the Prince during their term of office (as Mr Wille), the Prince will use his influence so that this candidate will not be nominated by the commission, thus preventing the Wille case from happening again in this sense. Furthermore, the chances of the procedure ever reaching a referendum were very small.

b. Sanctioning by the Prince of laws (Art.65.1 of the Constitution)

22. Under Article 65, in order for bills to become laws, they had to be sanctioned by the Prince and countersigned by the Head of Government. According to the authorities in Liechtenstein, countersignature by the Head of Government established his political and legal responsibility for the

proper execution of the act. The modification of the Constitution introduced in 2003 provided legal certainty as regards the consequences of non-signature by the Prince (non-entry into force).

23. Several members of the ad hoc committee underlined that the Prince had sanctioned all laws since August 2003. Furthermore, since 1921, the Prince only exercised this right three times (in 1961, 1989 and 1992), none of which concerned exceptional, conflict situations.

24. Other members of the ad hoc committee emphasised the power potential given by this right. These powers were real and the Prince would not hesitate to use them, including in a conflict situation with the Government and/or the Parliament. Thus the democratic principle of the separation of powers was in danger.

25. The members of the ad hoc committee noted that, similar to provisions in other Council of Europe member States, most bills were introduced by the government itself. There was, however, some disagreement within the ad hoc committee whether Parliament was able to distinguish between bills introduced by the Prince or the Government. It was noted in this context that there were consultations between the Prince and the Head of Government on such initiatives during their regular Monday morning meetings and other informal occasions and that the Prince had no administrative staff at his disposal to draft bills.

c. Immunity of the Prince for public acts (Articles 7 and 85);

26. This point received relatively little attention during the discussions. Article 7 of the Constitution granted immunity to the Prince (and the Crown Prince) for all public acts. Some members considered that this immunity was counterbalanced by the need to have such public acts countersigned by the head of government (Article 85) which therefore established political and legal responsibility. Others saw this requirement as having been emptied of its substance and reduced to a mere formality as the Head of Government was dependent on the Prince and for certain key acts (such as the dismissal of the government) no countersignature was necessary.

d. Emergency powers of the Prince (Article 10)

27. Under Article 10, the Prince shall, in urgent cases, take the necessary measures for the security and welfare of the State. Certain members considered that it was not possible or desirable to make an exhaustive list of situations which justified emergency powers and that the Prince would never and had never abused this right. Others nevertheless questioned the imprecise nature of this provision which left scope for arbitrary decisions.

e. Dismissal of the government or of individual members (Article 80)

28. Under Article 80, the Prince could dismiss the government as a whole, or individual members, if they had lost his confidence. Some members of the ad hoc committee pointed to the fact that the Prince has never exercised those powers and would not take an arbitrary decision, although discretion was needed in this context. Others pointed to the arbitrary nature of the powers and the fact that no reasons needed to be given.

f. Referendum on the “For Life” popular initiative to change Articles 14 and 27 of the Constitution

29. The participants also discussed at some length the referendum which took place on 27 November 2005 on two proposed constitutional amendments concerning the protection of human life (“For Life” popular initiative). It decided to devote some attention to this referendum since it provided concrete evidence of an important constitutional and political event in Liechtenstein since 2003.

30. The popular initiative, first started in March 2005 and submitted to Parliament in August 2005, proposed the following change to Article 14 of the Constitution (contained in Chapter III entitled “functions of the State”):

"The supreme function of the State is to protect human life from conception to natural death and to promote the general welfare of the People. For this purpose, the State shall provide for the institution and maintenance of the law, and for the protection of human dignity as well as of the religious, moral and economic interests of the People." (proposed amendments underlined)

31. This initiative had to be seen in the context of a general public debate in Liechtenstein since 2003 on the desirability of amending the abortion law. Currently, pregnancy terminations were a serious criminal offence. Proposals were discussed in parliament and in public for decriminalising abortions up to the 12th week of pregnancy. In addition, the initiative would also be relevant to any debate on active or passive euthanasia.

32. In June and August 2005, the Prince made public pronouncements during a lecture and in newspaper articles stating that he was against any change in the abortion law and that he approved the substance of the popular initiative. He also referred to this issue in his crown speech of 2005.

33. In September, the Parliament discussed the initiative and a counterproposal was agreed by the two main political parties and approved by Parliament as a whole by a large majority. The counterproposal was to supplement Article 27 of the Constitution, contained in Chapter IV entitled "General rights and obligations of citizens of the Principality", as follows:

"*Article 27bis (human dignity)*
1. *Human dignity shall be respected and protected.*
2. *No one shall be subjected to torture or to inhuman or degrading treatment of punishment.*

Article 27ter (right to life)
1. *Every person has the right to life.*
2. *The death penalty is prohibited."*

34. It was considered in Liechtenstein that the two proposals (the popular initiative and the counterproposal) were not mutually exclusive since rights under Chapter III (the original wording) were non-justiciable whereas rights under Chapter IV (the counterproposal) were justiciable before the courts. Thus, in the referendum in November 2005, both texts were submitted for approval to the people. Where the voter approved both texts, an additional question was asked to indicate a preference between the two texts.

35. Before the referendum, the Prince was asked by a newspaper to state his views on these texts, to which he replied that he approved of both texts and would sign them if approved. In addition, both the wife of the Prince (in her role as head of the Liechtenstein Red Cross) and the wife of the crown prince made similar statements in public.

36. The ad hoc committee spent most of the meeting in January 2006 on the outcome of this referendum. By a majority of 80%, the citizens of Liechtenstein supported the second proposals, with 20% supporting the first proposal.

37. Although the result was clear, the interpretations of it differed. For some, it was evidence that the Prince did not influence the outcome. For others, it was inappropriate in a democracy for an unelected head of state and his family to intervene publicly in the debate prior to the referendum.

38. The members of the ad hoc committee considered that it was now important for the Parliamentary Assembly to look closely at the follow-up to this referendum, in particular how the public debate would be conducted and the draft bills to be prepared in parliament in relation to topics affected by the referendum (abortion and euthanasia).

VIII. Conclusions

39. The ad hoc committee considered that this dialogue was a positive experience which could be a useful precedent for other appropriate cases. At the same time, it was important to avoid giving the impression that double standards were being applied, one for the new democracies of Central and Easter Europe and another for older, established democracies of Western Europe. Possible problems

in member States of Western Europe should not be seen as “luxury problems” when compared to deficiencies in the States of Central and Eastern Europe.

40. As a result of the dialogue, taking into account the evidence presented or known to them on the constitutional and political practices in Liechtenstein since the reform of the 1921 Constitution on 14 August 2003, the ad hoc committee was able to conclude the following:

- there was a change in the balance of power between the Prince and the People (seen collectively as encompassing the government, parliament, the media and citizens) with the former having increased his powers;

- the trend of constitutional monarchies in member States of the Council of Europe was to reduce the political powers of the constitutional monarch and to increase the powers of the representatives elected by the people; the evolution in Liechtenstein due to the constitutional changes in 2003 was contrary to this trend;

- as only two years had elapsed since the constitutional changes had been enacted in Liechtenstein, it was too early to make a definitive judgment whether the trend described above contravened the fundamental norms of the Council of Europe.

41. Taking into account its mandate and the situation described above, the ad hoc committee was unable to agree on a unanimous proposal to be submitted to the Bureau. It considered that it falls to the Bureau and the Assembly to decide whether it is opportune to continue the dialogue, possibly on the basis of an enlarged mandate.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

Ad Hoc Committee of the Bureau on the dialogue with the Parliament of Liechtenstein / Commission ad hoc du Bureau sur le dialogue avec le Parlement du Liechtenstein

Appointments by the committees/Désignations par les commissions:

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Mr Claudio Azzolini (Italy/Italie, EPP-CD/PPE-DC)
Mr Pedro Agramunt (Spain/Espagne, EPP-CD/PPE/DC)

Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme:

Mr Abdüllkadir Ateş (Turkey/Turquie, SOC)
Mr Christos Pourgourides (Cyprus/Chypre, EPP-CD/PPE-DC)

Monitoring Committee / Commission de suivi :

M. Marcel Glesener (Luxembourg, EPP-CD/PPE-DC), **Chairperson/Président**
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Appointments by the political groups/Désignations par les groupes politiques:

EDG/GDE: Mr Mikhail Margelov, Russian Federation/Fédération de Russie
UEL/GUE: Mr Mats Einarsson, Sweden/Suède
ALDE/ADLE: Mr Walter Schmied, Switzerland/Suisse

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Mr Horst Schade, Head of the Table Office/Chef du service de la séance

Ad Hoc Committee of the Parliament of Liechtenstein / Commission ad hoc du Parlement du Liechtenstein

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FBP : Mr Klaus Wanger (President of Parliament), **Chairperson/Président**
Mr Markus Büchel
VU : Mr Ivo Klein
Mr Gebhard Negele
FL : Mr Paul Vogt

Mr Josef Hilti, Secretary to the ad hoc committee

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NGOs/ONG

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