

**Parliamentary Assembly
Assemblée parlementaire**

Political Affairs Committee
Commission des questions politiques

Restricted
AS/Poi (2003) 02
25 January 2003
Adoc02_03

RT HON LORD KILCLOONEY OF ARMAGH
MULLINURE
GB - ARMAGH CITY BT61 9EL
ROYAUME-UNI

044 129SKS

Political Affairs Committee

**Proposals from the Princely House of
Liechtenstein for amendments to the
Liechtenstein Constitution**

Rapporteur: Lord Kilclooney (United Kingdom, EPP/CD)

Draft report

- I. Preliminary draft Resolution
- II. Preliminary draft Recommendation
- III. Explanatory memorandum by the Rapporteur



1. Preliminary draft resolution

1. In the Assembly's view most of the proposed amendments - shortly to be put to a referendum - to the Liechtenstein Constitution are inconsistent with Council of Europe standards and incompatible with the current practice in Europe, even in constitutional monarchies, which is to vest the dominant role in elected representative institutions.
2. The Assembly agrees with the findings of the European Commission for Democracy through Law's opinion (the Venice Commission), which takes the view, among other things, that the Princely House's initiative is designed to increase the monarch's personal discretionary powers and thus runs counter to the historical emergence of democratic institutions and to the body of European law.
3. The Assembly is concerned that neither the Government of Liechtenstein nor the Diet have seen fit to consult the Council of Europe, particularly the Venice Commission, which is frequently asked for preliminary opinions on draft constitutional or legislative amendments of this kind. It notes that the referendum procedure is now irreversibly under way.
4. The Assembly regrets the statement by the Prince Regent that he would leave the country, taking his family with him, if his proposals were rejected - a statement which would influence citizens' decision.
5. The Assembly points out that in present-day Europe democratic standards transcend borders, that political developments in one country are of concern to all the others and that it is in this spirit of common concern that the Council of Europe maintains constant vigilance as regards any departure from the norm. The Assembly accordingly trusts that the citizens of Liechtenstein will realise that its interest in the matter is not an interference with Liechtenstein's internal affairs but reflects its concern about their continuing exercise of their democratic rights.
6. The Assembly notes that when the Princely House's draft proposals on constitutional reform were initially submitted to the Diet in December 2001, it failed to win the required ~~two-thirds~~^{3/4} majority.
7. The Assembly calls on the Parliament of Liechtenstein to adopt a clear stance, in the run-up to the referendum, against the Princely House's amendment proposals and to inform the population of the possible consequences of any incompatibility between the Constitution and the Council of Europe's fundamental principles if the amendments were adopted. The Assembly hopes the Government will do the same.
8. It reserves the right to consider the matter further at the April 2003 part-session once the result of the referendum in Liechtenstein has been publicly announced.

II. Preliminary draft recommendation

1. The Assembly refers to its Resolution ... on the proposals from the Princely House of Liechtenstein for amendments to the Liechtenstein Constitution.

2. In that connection it draws attention to the Committee of Ministers' responsibilities under the Declaration of 10 November 1994 on compliance with commitments accepted by member states of the Council of Europe.

3. The Assembly accordingly asks the Committee of Ministers to:

i. invite the Liechtenstein Government to adopt a clear stance against the Princely House's amendment proposals and to inform the population of the possible consequences of any incompatibility between the Constitution and the Council of Europe's fundamental principles if the amendments were adopted;

ii. follow the Liechtenstein referendum very closely, scrutinise its results and draw the appropriate conclusions as regards Liechtenstein's membership of the Council of Europe in the light of the findings in the Venice Commission's opinion.

iii. **Explanatory memorandum by the Rapporteur**

A. INTRODUCTION

1. We are faced with a situation in which the constitutional changes put forward by Liechtenstein's Princely House raise a problem of compatibility with Council of Europe standards. Before going into the facts and the various views expressed so far I would emphasise the importance of this matter in the present political context.

2. The circumstances in which this matter has been referred to us are not precisely the same as obtained in 1978 when the report on Liechtenstein admission to the Council of Europe was debated and adopted. In the intervening 25 years the world has greatly changed and concepts of democracy and human rights have considerably evolved, both in Europe and elsewhere. To be frank, I do not think that these days a country, for example, in which women did not have the vote - that was the position in Liechtenstein at the time - could be granted entry to the Council of Europe.

3. Consequently the argument that the Council of Europe, having accepted the 1921 Liechtenstein Constitution - which, according to the Government of Liechtenstein, remains the constitutional basis in so far as the proposed amendments would not radically alter the existing Constitution - is not entitled now to criticise that Constitution must be rejected out of hand. The Council of Europe has the right and the duty to ensure that democratic institutions evolve in all the member states and it has always endeavoured to do so. This frequently constructive supervisory and collaborative work has intensified in the last ten years with Council of Europe intake of new states and with the establishment of a monitoring system.

4. Like many other aspects of the organisation of human societies, democracy and day-to-day democratic practice cannot be regarded as fixed once and for all. They evolve over time and with changing attitudes. The present trend in Europe is the deepening and consolidation of democracy. Various instruments adopted at summit meetings and the present deliberations of the Convention on the Future of Europe, in Brussels, testify to that. The general tendency applies no less to constitutional monarchies than to republican regimes. It is Europe's ambition and task to be a "role model" for the rest of the world. It can only be that if it sets its own house in order.

5. In the light of these various considerations, this report does not set out to perform highly detailed legal analysis. That has already been done by others, in particular the Venice Commission, and so this report will take an overall, politically-oriented approach. In opting to refer the matter to the Political Affairs Committee rather than the Committee on Legal Affairs and Human Rights, the Bureau, and then the Assembly, no doubt took the view that at this stage it is mainly appropriate to send a strong political signal to the public and institutions concerned. The main issue is whether the constitutional amendments suggested by the Princely House are improvements to Liechtenstein democracy or whether they are retrograde when compared with the present situation and the general tendency in Europe.

B. HISTORICAL OUTLINE

6. Along with Andorra, San Marino, Monaco and the Holy See, Liechtenstein is one of Europe's microstates (with a population of 33 000 and an area of 160 km²). Its two immediate neighbours are Austria and Switzerland.

7. The country is divided into the *Oberland* (Vaduz) and the *Unterland* (Schellenberg), and it has 11 communes. Originally, the lordships of Schellenberg and Vaduz were purchased, respectively in 1699 and 1712, by Prince Johann Adam von Liechtenstein, enabling his princely family of Austrian origin to become an "elector" (*Reichsfürst*) and sit as the 343rd member on the Council of the Holy Roman Empire, with the right to vote. The territory assumed the name of the Principality of Liechtenstein, from the Prince's name, contrary to the customary practice at the time, whereby rulers took the name of the places they ruled over. This point is of relevance today insofar as any move by

the Prince and his family to Vienna could result in the country no longer being able to call itself "Liechtenstein", as the name belongs to the ruling family.

8. The Principality of Liechtenstein became a sovereign state in 1806, when Napoleon agreed to its inclusion in the Confederation of the Rhine. Following the Congress of Vienna, the Principality was admitted to the new German Federation (*Deutscher Bund*, comprising 39 sovereign German states, dissolved in 1866). Until the end of World War I, Liechtenstein allied itself with Austria, with which it concluded a customs and postal union. Following the collapse of the Austro-Hungarian Empire, the Principality established closer relations with Switzerland, concluding a postal union (1921) and customs union (1923) and adopting the Swiss franc as its currency.

Institutions

9. The first constitution was adopted in 1862 and the first elections to the Diet (Landtag) were held in 1918. Most of the existing constitution dates from the reform in 1921. Article 2 of the 1921 Constitution provides that Liechtenstein is "a constitutional, hereditary monarchy on a democratic and parliamentary basis". Article 7 of the 1921 Constitution provides that the person of the Prince is sacred and inviolable. He represents the state in all its relations with foreign countries, but may not sign or ratify treaties without the consent of the Diet.

10. Today, the Diet, which is a unicameral parliament, has 25 members directly elected by universal suffrage for four years. The Government is a college of five members, consisting of a Head of Government and four Government Councillors, appointed by the Prince for four years on the proposal of the Diet. The highest judicial body is the State Council. The Prince has substantial powers: legislation cannot enter into force without being sanctioned by him, he appoints judges on the proposal of the Diet and he has the power to declare a state of emergency and dismiss the Government.

Accession to the Council of Europe

11. The question of whether or not Liechtenstein was a sovereign state, given its size and special relations with Switzerland, did not really arise, as Liechtenstein had pursued a very active foreign policy to assert its sovereignty, for instance, by becoming a party to the Statute of the International Court of Justice in The Hague in 1949. Liechtenstein became first an *ad hoc* observer and then an observer at the Parliamentary Assembly of the Council of Europe in 1971, signed the Final Act of the Conference on Security and Co-operation in Europe in 1975 and became a member of the Council of Europe in 1978 (see Opinion 90 (1978) and report by the Political Affairs Committee No 4193). The only problem mentioned in the Assembly's opinion was voting rights for women, which were not granted until 1984.

12. Liechtenstein ratified the European Convention on Human Rights in 1982, accepting the right of individual appeal and the mandatory jurisdiction of the Court. Protocol No 1, Article 3 of which sets out the right to free elections by secret ballot, under conditions which ensure the free expression of the opinion of people in the choice of the legislature, was not ratified until 1995.

Constitutional reform

13. Constitutional reform has been on the agenda for almost ten years and has been the subject of great controversy in Liechtenstein between the Prince and the Government and the Diet. The Prince has threatened several times to leave the country and rule from Vienna.

14. The Prince has presented several drafts that have been rejected by the Diet, and both the Diet and the Government requested various expert legal opinions in 2000 and 2001 (in particular, by Mr Batliner (member of the Venice Commission), Mr Wille, Mr Breitenmoser, Mr Funk, Mr Rhinov, Mr Winkler and Mr Frowein). For his part, the Prince sought the legal opinion of Professor Matscher, former judge at the Court in respect of Austria, who is also a member of the Venice Commission.

15. The latest version of the Prince's draft proposals was submitted to the Diet in December 2001. As it failed to achieve the necessary two-thirds majority, the Prince decided on 2 August 2002 to submit his reform proposals to a referendum. He tabled the text of the constitutional revision in the Diet, which rejected a request for a suspensive appeal. On 26 November 2002, by which time the Princely initiative had gathered far more than the 1,500 signatures needed, the Diet decided, by 20 votes to 5, to put it to a referendum, taking the view that such a step was not contrary to obligations under the Statute of the Council of Europe or the European Convention on Human

Rights. Amendment of the text by the Diet is no longer possible. The referendum must be held in the three to four months following (that is, by spring 2003 - to be precise, mid-March, according to our information).

16. In May 2002 and in September 2002 the Parliamentary Assembly had two petitions referred to it from citizens of Liechtenstein, asking it to consider whether the amendments which the Princely House had put forward were in accordance with Council of Europe standards and Liechtenstein's other international obligations. The Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) twice placed this item on its agenda and, in the absence of any formal request to begin a monitoring procedure under Resolution 1115(1997), and in the light of a letter from the Chair of Liechtenstein's parliamentary delegation, Ms R. Wohlwend, who is an AS/Mon member, it decided to suggest to the Bureau that the matter be referred to the Committee on Legal Affairs and Human Rights.

17. At its meeting on 6 November 2002 the Bureau decided to request an opinion from the Venice Commission. The Venice Commission adopted an opinion, on the basis of input from three of its members, on 13 and 14 December 2002 and made it public, as is its usual practice. At its meeting on 13 January 2003 the Bureau decided to publish the Venice Commission's opinion as an Assembly document (Doc 9661), to suggest that the Assembly hold an urgent debate during its January session and to refer the matter to the Political Affairs Committee for a report. The Liechtenstein Constitution, with the proposed amendments, will be found in Assembly document (Doc 9661 Addendum)¹. It was not until 15 January 2003 that the committee did me the honour of appointing me as rapporteur. It is worth mentioning, incidentally, that this matter was the subject of a parliamentary question from Mr A. Gross during the exchange of views with the Chair of the Committee of Ministers during the June 2002 part-session.

C. THE PROPOSED AMENDMENTS AND THE OBJECTIONS

18. In its essentials the 1921 Constitution of Liechtenstein remains in force unchanged. It is based on a public-law agreement between the Prince Regnant and the Diet ("Schlossabmachungen", staatsrechtlicher Vertrag) on the lawfulness of joint exercise of power. The Constitution was unanimously adopted by the Diet and approved by the Prince.

19. Article 2 of the Constitution states: "The Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis (Articles 79 and 80); the power of the State is inherent and issues from the Prince and the people and shall be exercised by both of them in accordance with the provisions of the present Constitution."

20. The opinion of the Liechtenstein Government on the constitutional proposals put forward by the Prince and Crown Prince states that these two essential components of the state hold power jointly. Given this dualistic structure of the Liechtenstein state, a consensus rule inherently operates: the main affairs of state can be conducted only by means of agreement and co-operation between the Prince and the people (in other words, the Diet). Neither the Prince alone nor the people or Diet alone can enact a law - any law requires that the two agree. In addition, the Prince has no executive powers allowing him to rule without a government. The Government further highlights that Liechtenstein citizens have very extensive rights in the matter of direct democracy which are virtually unparalleled in any other country.

21. It likewise points out that when Liechtenstein joined the Council of Europe, the finding, on the basis of the 1921 Constitution, was that Liechtenstein met the requirements for Council of Europe membership. The principles on which the state was organised, it maintains, were thus recognised and are unchallengeable. In the government's view, the constitutional proposals put forward by the Prince and the Crown Prince do not alter that position, as a comparison of the present Constitution and the constitutional proposals as regards their essential points will show.

¹ This document includes both amendments proposed by the Princely House and the « Citizens' Initiative for Constitutional Peace » in Venice Commission's view. These latter do « not raise any problems as to their compatibility with the Council of Europe standards ».

22. In this context the following considerations are relevant:
- in a letter of 4 November 1977 submitting the request for admission, the Liechtenstein head of government stated that the government of the Principality was convinced that Liechtenstein was able both to meet the requirements of membership and play its part in achieving the Council of Europe's aims and that Liechtenstein was likewise in a position to fulfil the obligations of Council of Europe membership and ready to do so, in particular with regard to the principles laid down in Article 3 of the Statute of the Council of Europe;
 - in its Resolution (78)23 on Liechtenstein, the Committee of Ministers took into account that the government of Liechtenstein had expressed the wish to be invited to become a member of the Council of Europe and had declared its readiness to respect the principles stated in Article 3 of the Statute;
 - in Opinion No.90 (1978) on Liechtenstein's accession to the Council of Europe, the Parliamentary Assembly said that Liechtenstein should be deemed able and willing to fulfil the provisions of Article 3 of the Statute and to collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I of the Statute of the Council of Europe.

The key points in the Princely House's constitutional proposals:

i. The Prince's immunity and countersignature by the Head of Government of the Prince's decisions

23. The Venice Commission's opinion on the amendments which the Princely House suggests making to the Liechtenstein Constitution (the constitutional proposals of the Prince and Crown Prince) firstly refers to the proposed new passage in Article 7(2): "The Prince Regnant is not subject to the jurisdiction of the courts and does not have legal responsibility". The opinion points out that in constitutional monarchies the immunity of the monarch is linked to ministerial countersignature. This ensures that, at all times, a public authority can be identified which is responsible for the monarch's acts.

24. Under Article 7 of the present Constitution, the Prince is sacred and inviolable, and from this provision derives his immunity and non-responsibility. The government's opinion on the Princely constitutional proposals states that the required countersignature of the Prince's decisions signifies responsibility of the head of government (see Article 85 of the Constitution). Amendment of Article 7(2) in line with the Princely proposals thus does not alter the position substantively as regards immunity of the Prince and countersignature.

25. I agree with the Venice Commission that this state of affairs raises serious concerns as to compatibility with the rule of law.

ii. The requirement that laws be sanctioned by the Prince Regnant

26. It is by means of this approval arrangement that the Prince Regnant plays a part in government as regards legislation. At present the Constitution does not say what becomes of any enacted legislation on which the Prince Regnant does not give his opinion. Entry into force of the amendment proposal would mean that if the Prince Regnant did not take a decision on a law within six months sanction would be deemed to have been withheld.

27. It should be noted that, according to the Liechtenstein Government's stance of 21 January 2003 on the Princely constitutional proposals, the Prince's sanction has been withheld in very few cases ("wenige Einzelfälle") since the 1921 Constitution came into force.

28. In the Venice Commission's view the function of reigning obliges the monarch to sanction laws. The monarch cannot refuse that sanction on account of his personal views.

iii. Appointment of judges (Articles 95 and 96 of the Constitution)

29. The Prince Regnant currently has an absolute right of veto over the appointment of Liechtenstein judges, which means that even if the Diet elects a judge the Prince Regnant is not obliged to appoint him or her.

30. The initiative proposes to include in Article 96 of the Constitution:

- the establishment of a joint judicial selection commission chaired by the Prince, who would have a casting vote in the event of a tied vote.
- the presentation by the commission of one candidate, whom the Prince must approve, to the vote of the Diet;
- the introduction of a special procedure should the Diet not elect the candidate presented. Under this procedure, in the event of disagreement on a fresh candidate within a period of four weeks a referendum must take place.

The Diet would present its own candidate for this referendum. Citizens entitled to vote could propose candidates under the right of petition in Article 64 of the Constitution.

31. The Venice Commission considers that the significant powers of intervention granted to the Prince Regnant in the judicial election procedure (the need for his consent before candidates can be presented for a vote in the Diet's judicial selection committee) may give him excessive influence and cast doubts on judges' independence. The Commission therefore considers that the proposed Article 96 offers insufficient guarantees of respect for Article 6 of the European Convention on Human Rights.

32. According to the case-law of the European Court of Human Rights, to establish whether a court can be considered "independent" of the executive, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, to the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence (Langborger v. Sweden, judgment of 22 June 1989, Series A no. 155, para. 32). With regard to judicial impartiality, appearances cannot be ignored. As the Court has noted "any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. What is at stake is the confidence which the courts must inspire in the public in a democratic society" (Piersack v. Belgium, judgment of 1 October 1982, Series A no. 53, para. 30).

33. I consider that the proposal in the new Article 96 is attempting to introduce an interesting innovation as compared with the current situation. However, it is not simply necessary to improve the 1921 Liechtenstein Constitution. Such a revision must also comply fully with the country's obligations entered into when joining, and subsequently contracted with, the Council of Europe. This latter criterion does not seem to have been satisfied.

iv. Emergency decrees

34. The Liechtenstein Government's position on the Princely House initiative states that the need for the Head of Government to countersign emergency decrees is uncontested. It maintains that for a state like Liechtenstein governed by the rule of law, it is natural that the issuing of emergency decrees should respect the proportionality principle. Under the 1921 Constitution, emergency decrees have only been issued when the particular circumstances made them appropriate and essential to meet their objectives, of which the public interest was the most important. So far, three emergency decrees have been issued by the Prince Regnant on the Government's advice (decrees nos 1943/4, 1982/49 and 1990/47). Since 1921, the Liechtenstein Diet has passed five laws including emergency measures.

35. The reform of the Prince Regnant's right to issue emergency decrees proposed by the Princely House initiative does not entail an extension of this right but instead sets out to codify certain limits and restrictions that already form part of the country's legal practice. For example, the initiative would limit the maximum period of application of such a decree to six months. This period and the possible concentration of state power solely in the hands of the Prince, together with the consequences that could ensue, have been criticised in Liechtenstein. It has to be noted that in its current form, Liechtenstein law places no time limits on the validity of decrees. Besides, this period is also subject to the proportionality principle. As to the possible concentration of state power during a state of emergency in the hands of the Prince, it has been argued that the Prince Regnant is required to swear a fairly detailed oath on the Constitution. Moreover, even when an emergency decree is in force the people of Liechtenstein have the right to call for a referendum on the abolition of the monarchy and the constitutional initiative of the Prince Regnant and the Crown Prince includes a proposal to enable Liechtenstein citizens to table a motion of no confidence against the Prince, which would be put to a referendum.

36. In its opinion, the Venice Commission notes that 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. The opinion also points out that both aspects are addressed in the proposal from the Citizens' Initiative for Constitutional Peace but not in the one from the Princely House.

v. Dismissal of the Government or members of the Government by the Prince Regnant

37. Under the Princely House's proposed revision of Article 80.1 of the Constitution, if the Government loses the confidence of the Prince Regnant or the Diet it loses its power to exercise its functions. The Prince Regnant must then appoint an interim Government until a new Government takes up office. The interim Government may govern for a period of up to four months before submitting itself to a vote of confidence in the Diet, unless the Prince has previously appointed a new Government on the Diet's recommendation. It follows that the Government of Liechtenstein may lose the power to exercise its functions once the Prince has withdrawn his confidence, even if it still has that of the Diet.

38. The Government's opinion on the constitutional initiative of the Prince Regnant and the Crown Prince states that in 1995 the Diet, the Government and the Prince agreed that, in the light of the dual constitutional regime, the current wording of Article 80 signified that public authority is embodied in the Prince Regnant and the people. According to this interpretation, the Government always needs the confidence of both the Prince Regnant and the Diet. If the Government no longer has the confidence either of the Prince or of the Diet it must be dismissed. The proposal in the Princely House initiative therefore simply codifies existing practice. In other words it represents an extension of the Government's responsibility to the Diet in accordance with basic constitutional principles.

39. The Government considers that the reason for the appointment by the Prince of a transitional government in the event of the existing Government's dismissal is to avoid, as at present, a period without government and the difficult situation that could ensue.

40. The Venice Commission considers that these proposals in the Princely House initiative are 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 and his acts must always be confirmed by a minister directly responsible before a parliamentary assembly. By way of example the Commission says that in Belgium the King has not been able to dismiss a government on his own initiative since 1831. Its opinion also notes that similar considerations apply to the proposal in the second paragraph of Article 80 concerning the dismissal of individual ministers. This would violate the principle of governmental solidarity. The head of government should take responsibility before Parliament for the dismissal of a minister.

41. I agree with the Venice Commission that even though this initiative seems initially to have been motivated by good intentions it would place Liechtenstein in an anachronistic position with regard to the evolution of constitutional monarchies.

vi. Abolition of the State Court's power to interpret the Constitution in case of doubt

42. The Princely House initiative provides for the repeal of the existing Article 112 of the Constitution, which gives the State Council jurisdiction to interpret the Constitution in the event of doubt that cannot be removed by agreement between the Government and the Diet. The Venice Commission rightly observes that this may be linked to the amendment of Article 111 introducing the requirement for the Prince Regnant's assent for any binding interpretation of the Constitution.

43. The Government's opinion on the Princely House initiative does not take a direct position on this matter. However some academic commentators have pointed out that in a number of European states there is no constitutional court and in certain others such courts are not empowered to interpret the constitution.

44. The Venice Commission notes that in a system where public power is exercised by very different figures with different legitimacy, the interpretative role of the constitutional court to resolve disputes between these figures would seem particularly significant. To abolish this power would amount to a reduction of the guarantees of the rule of law in favour of political compromises and, ultimately, in favour of the powers of the Prince Regnant which are not democratically controlled.

vii. Introduction of a right of secession for Liechtenstein municipalities

45. The Princely House initiative also proposes to add a second paragraph to Article 4 of the Constitution giving each municipality the right to secede from the state following a referendum. I agree with the Venice Commission's views concerning both the appropriateness of such a constitutional provision and its conformity with international law. Otherwise, as it states in its opinion, this matter falls within the domestic jurisdiction of Liechtenstein and of any third state involved.

D. CONCLUSIONS

46. The development of constitutional regimes from the eighteenth century on was motivated above all by the desire to limit monarchical prerogatives, which had formerly been absolute. In the one European country without a written constitution, namely my own, there is still an abundance of laws, declarations and case-law that, since Magna Carta, have formed a body of references and have served as a model for parliamentary democracy as it is currently practised. Over the years in the United Kingdom, the "irresponsibility" of the Crown has led to the transfer of the practical exercise of crown prerogative to the Government, thus making it "responsible" to Parliament and the people. Since the reign of Queen Anne (1707) monarchs have never refused to grant assent to legislation and their involvement in the legislative process has been purely formal.

47. The first French Constitution, after the Revolution (1791) introduced the principle that all the King's actions had to be countersigned by a minister. This was the start of a long process leading to a radical change in power relationships, to the detriment of monarchs. This trend has subsequently continued and developed, as the Venice Commission has clearly shown in the examples of modern constitutional monarchies that it cites.

48. An examination of the Princely House's proposed amendments shows that this trend has not been reflected in Liechtenstein. In fact the proposals represent a regression from the 1921 Constitution, which was certainly not the best model of its kind. Most of the arguments of the Government and experts in support of an alternative point of view, based on the size of the country, the existence of direct democracy and a political system traditionally based on "constitutional dualism" with sovereignty shared between the monarch and the people, are unconvincing². The Parliamentary Assembly has commented on, and even severely criticised, other countries on lesser grounds on a number of occasions. Besides, certain countries have been forced to wait - or are still waiting - for Council of Europe membership because of imperfections in their constitutions, their electoral laws or various types of legislation, or even because of non-compliant and unacceptable practices of their heads of state. There can be no question of applying double standards. Finally, recent history has shown that as well as serving citizens' interests and upholding their rights, the use of referendums as the ultimate justification for political acts may also have long-term and unexpected negative consequences.

49. The Prince's constitutional initiative could have been a unique opportunity to amend key parts of the 1921 Constitution and take account of developments in Europe's constitutional heritage since 1945, as expressed in the Council of Europe's and European Union's underlying principles, as well as in these institutions' main legal instruments and guidelines. Instead, it serves to perpetuate these distinctive features, and above all the principle - unique in Europe - that sovereignty is exercised jointly and on an equal footing by the Prince and the people.

50. In the light of the foregoing observations, I propose, as Rapporteur, a two-stage approach:

- a. initially and immediately, the Parliamentary Assembly should launch an appeal to the Liechtenstein public and Government drawing their attention to the seriousness of the situation and the weakness of the arguments put forward by the Princely House for its proposed constitutional amendments. The Assembly could also require the Government and the Parliament (Diet/Landtag) to openly support a "no" vote;

² A two page document presented by the "Demokratie" movement, which had also presented one of the petitions against the Princely House initiative, contains relevant comments on the Government's arguments concerning the Venice Commission opinion.

- b. later, following the referendum and the announcement of the result, should the latter support the Princely House amendments, the situation should be reviewed once more in the light of the measures at the Assembly's disposal, ranging from suspension of the Parliamentary Assembly delegation's powers via the opening of a monitoring procedure to a proposal to the Committee of Ministers to withdraw the country's right to Council of Europe membership.
51. For the moment, what is needed above all is preventive action, in the hope that the Liechtenstein authorities, at all levels, will co-operate fully.