



Conferencia Internacional  
Democracia Directa en América Latina 14/15 de  
Marzo de 2007, Buenos Aires, Argentina

International Conference  
Direct Democracy in Latin America 14-15 March  
2007, Buenos Aires, Argentina

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## **Direct Democracy in Liechtenstein**

Liechtenstein is one of the smallest countries in Europe. There is a long monarchic history of Liechtenstein as part of the Holy Roman Empire, and since 1806 it is a sovereign state. The 1921 constitution established a political system with division of power: there is the Prince on the one side, the People on the other side. It is not a purely democratic system but a mixed or dualistic constitution. At the same time direct democratic rights were introduced with the new constitution. In the IRI-Europe ranking Liechtenstein nowadays holds a high position concerning Direct Democracy. Compared to Switzerland there is even a wider range of direct democratic instruments, including recall for example. But the instruments are not as frequently used as in neighbouring Switzerland. Another remarkable difference is that Direct Democracy in Liechtenstein is embedded in a basically constitutional, mainly representative political system. It is therefore a question of designing the instruments and the rules to make Direct Democracy compatible with different political systems.

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# Direct Democracy in Liechtenstein

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## 1 Beginning of Direct Democracy in Liechtenstein

Liechtenstein is a very small state in Europe surrounded by Austria and Switzerland. The official language is German. The country's surface area is only 160 square kilometres, and the current population amounts to not more than 36,000 persons. One third of the population are foreigners, mainly from other German speaking countries, but also from Southern European countries and many others.

The instruments of direct democracy were introduced in Liechtenstein with the constitution of 1921 - later than in Switzerland, but strongly influenced by the Swiss model of direct democracy.<sup>1</sup> Before that, the power in the state was mainly held by the prince (*Fürst*). The constitution of 1921 did not, however, establish a purely democratic political system. Although the monarchy was abolished after World War I in neighbouring Austria, where the Princes of Liechtenstein had lived for centuries and at that time still did, Liechtenstein continued as a Principality (*Fürstentum*). But during World War I and the years thereafter, there was a growing movement within parliament (*Landtag*) and in public politics demanding more democratic rights. These were finally achieved with the constitution of 1921, where the so-called 'dualistic' construction of the constitution established a separation of power into two main forces: the prince and the people. This dualistic construction of the constitution as well as the constitution itself – despite having been revised several times – remains in force today.<sup>2</sup>

At the time when the new constitution was adopted there was a political change in many aspects in Liechtenstein. The traditional relationship with Austria was weakening and there was a significant shift towards Switzerland. At the same time there was growing criticism of the overwhelming power of the prince. Before 1921, the government was exclusively installed by the prince, and the head of government was a princely official and – to the disapproval of the people and the political elite – a foreigner from Austria. Parliament, which had only existed since 1862, had almost no power or rights. Moreover, the prince had the right to appoint three of the fifteen members of parliament, the rest being elected by the (male) voters on the basis of an indirect election system.

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<sup>1</sup> On direct democracy in Liechtenstein in more detail see Marxer (2007/forthcoming), also Batliner 1993.

<sup>2</sup> On the dualistic principle: Ignor 1987; Willoweit 1987; Riklin 1987; Batliner 1994. On the period of the development of the constitution of 1921: Vaterländische Union (ed.) 1996.

In many respects the constitution of 1921 followed the earlier constitution of 1862. It was designed mainly as a representative political system comprising the ongoing strong power of the prince, a unicameral parliament – now being elected directly and with no princely members of parliament – and the government consisting of citizens of Liechtenstein who now had to be elected by joint agreement of the parliament and the prince.

The direct democratic instruments – the popular and/or communal initiative and referendum, the authorities' referendum and the consultative referendum – were imposed on the basically representative system. The constitutional tradition of monarchy and the type of parliamentary democracy were kept, although strongly modified in that parliament gained more power and henceforth was the main actor in the legislative process. No law could enter into force without the approval of the parliament – unless a popular vote replaced the decision of the parliament. On the other hand, the prince had and still has the right to sign all laws. If he does not, no law can enter into force, regardless of whether there was prior approval by parliament or by a popular vote.<sup>3</sup>

The complex balance of the Liechtenstein constitution is expressed in the programmatic Article 2 of the constitution: “The Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis (...); the power of the State is inherent in and issues from the Prince Regnant and the people and shall be exercised in accordance with the provisions of the present Constitution.”

In the meantime there have been some changes in the constitution in respect of direct democratic rights, none of them reducing the previous rights. From the very beginning of the new constitution of 1921 there was the right of the people to participate in the legislative process through initiatives and referendums. The instruments were allowed for ordinary laws as well as for constitutional laws; the referendum also for financial decisions taken by the parliament. Additionally, there was the right of the people to convene or to dissolve the parliament.

The first step to extend direct democracy was made in 1992 by introducing the right to vote on international treaties. In 2003 a long series of articles of the constitution were modified or newly introduced, imposed by the princely house and approved by the people through a popular vote.<sup>4</sup> Some of them expanded direct democratic rights - such as the right to a vote of no confidence in the prince, the right to abolish the monarchy without a veto right of the prince, and the right to

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<sup>3</sup> Pállinger (2003) compared ‘monarchies’ in Europe and found that the monarchy in Liechtenstein is more powerful than in most other countries where the monarchy is dominated by the democratic principle.

<sup>4</sup> The vote was highly controversial. It was the result of a serious conflict between the representative bodies and the prince. In the end the prince himself successfully launched a popular initiative to change the constitution in the way he wished. The public communication around the vote was dominated by the threat of the prince and the princely house to leave the country if the prince's initiative failed. Marcinkowski 2004.

elect judges in special political constellations. In the following chapter the various currently existing direct democratic instruments in Liechtenstein will be described in more detail.

## **Main Direct Democratic Instruments in Liechtenstein**

The following description of direct democratic instruments reflects the current legal situation, including changes to the constitution since its coming into force in 1921.

### *Popular Initiative*

There are two ways to launch an initiative, the one as a formulated popular initiative, the other as a non-formulated initiative. The formulated initiative is a precise proposal for a new law or for amendments to laws or to the constitution. The non-formulated initiative is a suggestion for some legal change without this being binding on the parliament.

The initiative can be launched by the people (*Sammelbegehren*) or by municipalities (*Gemeindebegehren*). There are eleven municipalities in Liechtenstein, creating a second administrative level below the national level. Popular initiatives require 1,000 signatures or the approval of three municipalities to effect a popular vote, if it concerns laws. If the initiative proposes to change the constitution, 1,500 signatures or the approval of four municipalities is required.

There have been several attempts in the past to start a community-based initiative. But this was never successful, either because it proved impossible to gain the support of the municipalities, or because the initiative was rejected by parliament as being an excluded issue. This happened several times from the 1930s to the 1950s. The usual way now is to launch a popular initiative not as a municipalities initiative but as a signature-collecting initiative.

An initiative can be withdrawn by the initiators. This makes sense if the parliament makes a counter-proposal (see below) to an initiative which seems to be a better solution even to the initiators. This possibility was adopted in 1996, but the option has never been used in Liechtenstein so far.

### *Popular Referendum*

The counterpart of the initiative is the popular referendum. Whereas the initiative is used to effect some change, the referendum tries to block a decision already taken by the parliament. As with the initiative, the referendum can be used by the people or by municipalities. Again, 1,000 signatures (or three communities) are required to force a popular vote on a parliamentary

decision if it concerns laws, or 1,500 signatures (or four communities) if it concerns the constitution.

### *Administrative Referendum*

It is controversial whether administrative referendums should be treated as a part of direct democracy. IRI Europe makes a clear distinction between plebiscites and direct democracy in its Guidebook to Direct Democracy (2005, pp. 268f.). “In reality, plebiscites are instruments of power which those in power use in an attempt to reinforce or salvage that power with the help of the people.” They are “not classified as direct democracy procedures, because they do not fulfil the criteria of power-sharing.”

This statement however seems to be too dogmatic under circumstances where the electorate has the right to effect popular votes by initiatives and referendums on its own account. Administrative referendums are not exclusive in this context. It is not exclusively up to the administrative body to decide whether the electorate can participate in the decision-making process or not. The administrative referendum perhaps merely shortens the process if it is foreseeable that a popular referendum will be launched anyway. In Liechtenstein the administrative referendum (*Landtagsbegehren*) is used in many cases if the parliament believes that a draft law is too important or too close to the people’s political rights to be accounted for only by parliament. This holds, for example, for fundamental changes to electoral law.

The parliament also has the right to make a counterproposal (*Gegenvorschlag*) to a popular initiative. This can be done when the parliament debates the initiative and does not agree with it. In this case there will be a popular vote on the issue. Parliament can make its own proposal as a counterproposal to the initiative. The vote on both proposals is held at the same ballot. If more than one proposal is submitted, the voters can approve more than one proposal and at the same time indicate which one they would prefer if both (or more) achieved a majority of the votes. The one with the most ‘Yes’ votes wins. This is called the “double yes” method with a final ballot.

In Liechtenstein the administrative referendum can be used by the parliament, but not by the government or the prince. It is a precondition that the parliament has first taken a decision with the necessary majority. It then has to declare that the decision is not urgent, and with the majority in parliament the decision can be submitted to a popular vote. The popular vote is binding on the parliament. If the people agree with the act of parliament, only the countersignature of the prince is then required to validate the decision. If the voters reject a draft it cannot enter into force.

### *Consultative administrative referendum*

i Unlike the normal administrative referendum, the consultative referendum (*Konsultativabstimmung*) does not envisage a precisely formulated draft, but an idea or a general political goal. Parliament can ask the voters in a formal way to express their preferences on policy issues. It is like an opinion poll, but executed formally, restricted to the electorate and done at the ballot box. The result of the consultative referendum is not binding on the parliament.

The popular initiative, the popular referendum and the administrative referendum are the most important instruments of direct democracy in Liechtenstein. Since 1921 there has only been one consultative administrative referendum on the question of whether to introduce women's right to vote (1968). All other popular votes belong to one of the above-mentioned three types of ballot.

As we have seen before, the right of initiative and referendum includes not only constitutional laws but also ordinary laws. In addition to that, people can also launch a referendum on financial decisions of the parliament and (since 1992) on any international treaties agreed by parliament. Financial referendums are only allowed if they concern single expenditures of more than 300,000 Swiss Francs, or recurrent expenditure of 150,000 Swiss Francs (currently 0.04 and 0.02 percent of the national budget respectively). In 1921 the minimum threshold for financial referendums was 4 percent (single expenditure) or 1.6 percent (recurrent expenditure) of the national budget. In other words, there were only a few cases which fulfilled this condition in former times, whereas today a lot of financial decisions made by the parliament are possible subjects for a referendum.

### **Other Direct Democratic Instruments in Liechtenstein**

Although they have never been applied so far, there are some other direct democratic instruments in Liechtenstein. Some of them have been part of the constitution since its introduction in 1921, while others were introduced only recently (in 2003) by a popular vote. The year of introduction of the instrument is indicated in parentheses.

### *Initiative for the convocation of the parliament (1921)*

1,000 signatures are required to launch an initiative for a popular vote on the convocation of the parliament. Alternatively this can be done by three communities.

### *Initiative for dissolution of parliament (1921)*

With 1,500 signatures (four communities) there would be a popular vote on the dissolution of parliament. If the majority of the voters agrees, parliament will be dismissed and new parliamentary elections will be held.

### *Motion of no-confidence in the prince (2003)*

If the people are dissatisfied with the prince they can launch an initiative of no-confidence against the prince. The process starts with the collection of 1,500 signatures to force a popular vote on this issue. If the majority expresses a lack of confidence in the prince, the motion is not binding at all but is passed to the princely house. It is up to the princely house to decide on the issue: whether there should be some disciplinary measures against the prince – maybe even the dismissal of the prince – or nothing at all. It is debatable whether this really should be treated as a direct democratic right, because there is no guaranteed real effect of the initiative.

### *Abolition of the monarchy (2003)*

The people have the right to abolish the monarchy. The process starts again with 1,500 signatures as a kind of initiative. The first popular vote would be on the question of whether to initiate the process of abolishing the monarchy. If there is a majority in favour of the continuation of the process, the parliament is obliged to draft a republican constitution (with no elements of monarchy remaining) within one year. After this, there is a space of another year before there is a popular vote on the newly-designed republican constitution. This would be an obligatory referendum. The prince would have the right to make his own proposal for a new constitution at the same ballot. If neither of the proposals were to gain a majority of the votes, the old constitution would remain in force. If more than one proposal secured a majority, a second ballot would take place.

### *Nomination and election of judges (2003)*

The election of judges is a rather complicated procedure in Liechtenstein. The first stage involves a board composed of members of parliament, a governmental minister, appointees of

the prince and the prince himself, which proposes a candidate or candidates to the parliament. The prince nominates half of the board, has the casting vote and the right of veto in the board. If parliament does not accept the proposed candidate(s), it has the right to make its own proposals. In the case of dissent between the board and the parliament the final and binding decision is taken by a mandatory popular vote. At this stage of the process people also have the right to collect signatures for their own nominations of judicial candidates. The candidate with the absolute majority of votes will be elected. If none of them achieves the absolute majority, a second ballot is held to decide between the two leading candidates. There is no veto right of the prince after the final and binding decision of the people.

## **Design of Direct Democracy in Liechtenstein**

The direct democratic instruments in Liechtenstein remind one very much of the instruments in Switzerland.<sup>5</sup> There are, however, some differences not only at the level of the instruments themselves. As we have seen, there is a broader spectrum of instruments in Liechtenstein - partly due to the dualistic construction of the constitution - including direct democratic rights which are especially focussed on the relationship between the people, the prince and the bodies of the representative democracy. But there is an even greater distinction between Swiss and Liechtenstein direct democracy in respect of the principle functioning of the political system. The Liechtenstein system is founded on the constitutional principle, whereas Switzerland follows the principle of popular sovereignty.<sup>6</sup>

### *Constitutionalism*

The direct democratic rights in Liechtenstein must not be considered as the peak of sovereignty in the political system of Liechtenstein. Popular sovereignty is limited by two main factors, one being the constitutional principle with the rule of law and the validity of human rights through the constitution and international treaties, such as the European Convention on Human Rights. The second strongly limiting factor is the strong position of the prince in the dualistic constitution of Liechtenstein (see below).

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<sup>5</sup> See Marxer/Pällinger 2006.

<sup>6</sup> See the merging of the concepts of constitutionalism vs. people's sovereignty (Jung 2001) and consensus- vs. majoritarian-oriented direct democratic instruments (Vatter 2000; 2002) in Marxer/Pällinger 2006.



In order to avoid having popular votes on issues that are in conflict with the constitution or with international law, formulated popular initiatives are routinely checked as to their compatibility with the constitution and treaties. The check is carried out by the government after the registration of the initiative. The government then sends a report on the initiative and the result of the check to the parliament. The parliament then has to decide whether the initiative is allowed or not. If it is rejected because it is in conflict with the constitution or international law, the process has already come to an end. If it is allowed to proceed, the initiative will be published by the administration and the collection of signatures can start.

After an affirmative decision of the voters, the rule of law still works. The constitutional court (*Staatsgerichtshof*) can suspend laws if they are not compatible with the constitution, even if they have been passed by popular vote and are already in force.

### *Countersignature or Veto by the Prince*

A second strongly limiting factor to the people's absolute sovereignty is the power of the prince. He has the right to sign – or not to sign – most of the acts of popular votes. This includes his right to approve or refuse votes on popular initiatives, administrative referendums (as well as any decisions of parliament concerning laws or the constitution), and popular referendums when people support the decision of the parliament. In the case of a popular referendum which rejects the decision of parliament the process is blocked in any case and the countersignature of the prince is redundant.

### *Procedure and Time Limits*

Popular referendums can be started as soon as the parliamentary decisions open to referendum are publicly announced by the government. Things develop pretty fast from then on: there is only a 30-day period in which to collect the signatures of people with voting rights, i.e. Liechtenstein citizens of 18 and above (men and women) living in Liechtenstein. The signatures have to be collected on separate sheets for each municipality. They are checked by the mayors of the municipalities and afterwards have to be handed over to the government. The signatures are checked once again by the government which finally organizes the ballot within three months.

Popular initiatives first have to be registered with the government. After the checking process, (see above) the government reports to the parliament, which has to decide whether the initiative is allowed or not. If it is allowed, the government publishes the initiative and the collection of

the signatures can start. There is only a period of six weeks to collect the required signatures. Within this time period the signatures – again certified by the mayors of the municipalities – have to be handed over to the government. The result of the collection of signatures is published by the government and a report goes to the parliament. The parliament has to discuss the initiative in its next session and come to a conclusion within two months. The ballot, if necessary, has to be held within three months after the decision of the parliament.

The parliament can also agree with the initiative and take an affirmative decision. If so, the legislative act can be treated like any other legislative act taken by the parliament. This means that the parliament can still arrange a popular decision on the matter, strictly speaking as an administrative referendum, since it has now become a parliamentary proposal. If the parliament approves the initiative without arranging a popular vote, people can start a referendum against the parliamentary decision. If parliament does not agree with the initiative, a popular vote must be organized.

### *Number of Signatures*

Currently, 1,000 to 1,500 signatures are required for initiatives and referendums. In relation to the total number of people with voting rights, this amounts to around 6 to 9 percent of the electorate that has to sign an initiative in order to effect a popular vote. This seems to be pretty high. If we go back to the beginnings of direct democracy in Liechtenstein it was even higher. In 1921, 400 to 600 signatures were required, but there was a smaller population and at that time only male voters had the right to vote. This meant that 22 to 33 percent of the people with voting rights had to sign a proposal. It is clear that direct democratic rights were designed to function as an emergency brake or a safety valve, but not to be the regular way to take political decisions.

There is the same trend towards making referendums and initiatives easier as has already been shown with the financial referendum. To begin with, the use of direct democratic rights was confronted with relatively high obstacles, whereas today the hurdles are significantly lower.

### *Urgency*

There is one rule in the constitution which generally allows the parliament to protect a parliamentary decision from a popular referendum. It is when a legal act is declared urgent. This is always the case with the annual budget that passes through parliament towards the end of a year. People cannot use a referendum against it. If parliament were to use the urgency clause of

the constitution too often it would indeed undermine people's direct democratic rights. If there were an appeal to the constitutional court, it is quite sure that this practice would be banned. In fact, urgent decisions are a rare exception for special cases under justified circumstances.

### *Appeals*

At all stages of the proceedings there exists the right of appeal to a dedicated body, both for the initiators and even for each individual voter. Depending on the stage of the proceedings and the grounds for the appeal, the administrative appeal goes to the government, the administrative court or the constitutional court.

### **Application of the Direct Democratic Instruments**

In the direct democracy rating by the Initiative and Referendum Institute Europe (2002), Liechtenstein took a prominent place in the upper region of the scale. Yet the confirmation of princely power in 2003 and the awareness that the power of the people in most cases is institutionally limited led to a new rating in the European midfield (IRI 2004). Beyond these fundamental considerations there is a large variety of direct democratic rights in Liechtenstein which can and do supplement the mainly representative structures of the political system. Compared to the undoubted leader of direct democracy – Switzerland – there is still a significant gap, however, especially with respect to the use of the instruments. While in Switzerland around ten to fifteen popular votes on national issues take place every year (not counting decisions at the federal state and community level), the long-term average of national popular votes amounts to roughly one per year in Liechtenstein, increasing a little during the last one to one and a half decades.

*Table 1: Frequency of popular votes in Liechtenstein (1980-2006)*

	1980-89	1990-99	2000-06	1980-2006
Popular Initiative	8	5	4	17
Popular Referendum	5	2	6	13
Authorities' Referendum	4	4	2	10
Authorities' Counterproposal	1	0	1	2
Total	18	11	13	42

*Data Source: Marxer (2007/forthcoming).*

The success rate for the different types of popular votes varies significantly. Popular initiatives have the lowest success rate. Less than one third of the initiatives succeeded during the time period from 1980 to 2006. By comparison, the parliament was quite successful. 70 percent of the authorities' referendums were supported by the electorate, and one of the two counterproposals was also approved. On the other hand, the popular referendum really serves as an emergency brake against parliamentary decisions. If there was a referendum, less than 40 percent of the drafts of the parliament were successful.

*Table 2: Success rate of direct-democratic instruments in Liechtenstein (1980-2006)*

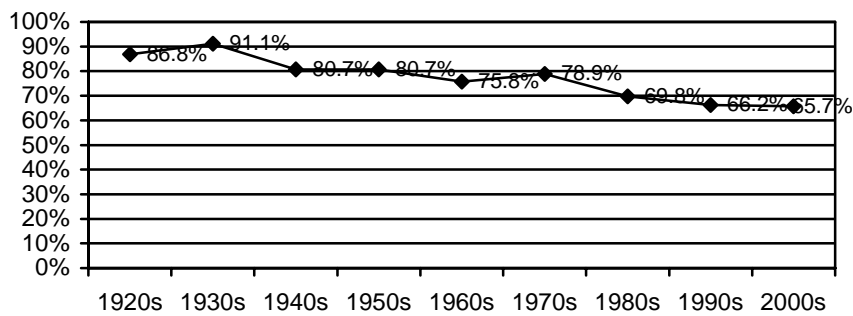
	Popular Votes	Success rate (‘Yes’ to the draft)
Popular Initiative	17	29.4 %
Popular Referendum	13	38.5 %
Authorities' Referendum	10	70.0 %
Authorities' Counterproposal	2	50.0 %
Total	42	42.9 %

*Data Source: Marxer (2007/forthcoming).*

Finally, we can have a look at the voter turnout. There is another remarkable difference to the Swiss case since the voter turnout in Liechtenstein is quite high. In former days it reached levels of 90 percent and more. Nowadays the average is around 65 percent, but participation is highly

selective. During the present decade voter turnout has varied from 48 to 87 percent, depending on how important the issue seemed to be to the electorate and how intensive and controversial the public communication was in the run-up to the popular vote.

Figure 2: Voter turnout at popular votes in Liechtenstein (1919-2006)



Source of data: Marxer

(2007/forthcoming).

## Conclusions

Liechtenstein has enjoyed a great variety of direct democratic instruments since 1921 when the new constitution was adopted. Some of them represent the classical type of strong instruments like the popular initiative and the popular referendum. In addition, parliament has the right to arrange popular votes or make counter-proposals to initiatives. These are the dominant direct democratic instruments in Liechtenstein.

Since the fundamental revision of the constitution in 2003, some additional direct democratic rights have supplemented the wide range of direct democratic rights, including the right to a motion of no confidence in the prince, the right to elect judges (where there is dissent between the prince and the parliament), and the right to abolish the monarchy without the prince having the right of veto. These rights have not been used so far, as with some other direct democratic rights such as popular votes on convening or dissolving parliament.

On the other hand, direct democracy in Liechtenstein is not unlimited. Popular votes are usually binding on the parliament, but not on the prince. In most cases he possesses a veto right. If he does not sign a law it cannot enter into force, even if there is an overwhelming majority of the people at the ballot in favour of it. The veto cannot be overruled. This is due to the so-called dualistic principle of the constitution, where state power is separated into two parts: the prince and the people. This means also that the sovereignty of the people is restricted, at least as long

as the monarchy is not abolished, which is an ultimate solution, though possible by legal means.

Besides the strong role of the prince limiting the direct power of the people, Liechtenstein follows the constitutional principle with its additional restrictive effects on direct democracy. That is the reason why not all proposals supported by popular initiatives are allowed. They are first examined to see whether they harm the constitution or international treaties. The constitutional court is the crucial level of jurisdiction which in case of appeal can abolish laws even after they have entered into force.

So far, direct democracy is not the dominant aspect of the political system in Liechtenstein. Basically it is a representative democracy, combined with strong rights of the monarch. Direct democratic rights play more or less the role of a safety valve or an emergency brake which allows the electorate to accelerate or slow down policies. It also leads to a high level of interest in politics. Even if the instruments are not in daily use, they have an indirect effect on the political process. The authorities always have to be aware that there might be a popular vote on any issue. From the beginning, therefore, legislation proceeds in close contact with key actors who can eventually behave as functional veto players.<sup>7</sup>

To sum up, not only is fundamental agreement needed between parliament, government and the prince, but also broad support by the people. This generates a mainly consensus-oriented political system, where direct democratic rights additionally intensify the consensus pressure of the system.<sup>8</sup> With the constitutional revision of 2003 the balance of the system has moderately changed. The strong position of the prince has basically been confirmed; in some respects his power has even been extended, i.e. the right to dismiss the government at any time, or to play a dominant role in the process of electing judges. On the other hand, the voters received some new direct democratic rights, especially the right to be the arbiters if there is dissent in the process of electing judges, or the right to abolish the monarchy by legal means, with no right of veto by the prince. Lastly, the representative bodies, i.e. the government and parliament, were slightly degraded.

It is too early to evaluate whether there is a new balance in the political system with a long-lasting perspective, or whether the conflict-resolving mechanisms in the constitution are not adequate to open a fruitful co-operation between the different institutional players. As mentioned above, quite a lot of direct democratic instruments – among them all the new rights from 2003 – have never been used, and the experience of the last few years indicates that there

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<sup>7</sup> The veto-potential according to the definition of Tsebelis (2002) is quite high in Liechtenstein.

<sup>8</sup> Following Lijphart 1984, 1999.

will probably be no substantial change in the use of the instruments and the role of direct democracy in Liechtenstein.

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