

Since 2003, no longer an indivisible and inalienable whole. The right of the Liechtenstein municipalities to initiate a secession procedure[•]

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Abstract: This article subjects the right of the Liechtenstein municipalities to secede to a constitutional analysis. It takes into account Hans-Adam II's comments on the right to self-determination, the legal opinions obtained in 1999 and Opinion No. 227/2002 of the Venice Commission. The investigation concludes that by introducing Article 4 paragraph 2, Hans-Adam II disregarded Article 1 of the Constitution of 1921 ("The Principality of Liechtenstein constitutes [...] an indivisible and inalienable whole"), which dates back to the Constitution of 1862. Furthermore, he did not respect the declaration to maintain the integrity of the Principality, which every successor to the throne has to make prior to receiving the oath of allegiance.

Keywords: Right of communities to secession; Right to self-determination; Local self-government; Self-dissolution of a state; Liechtenstein Constitution

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1. Introduction

In March 2003, Liechtenstein's voters approved a comprehensive revision of the Constitution by referendum¹. The main topics of this revision, initiated by the Princely House, were the role of the Reigning Prince and the chapter on the courts, which was largely rewritten². At the same time, Article 4 of the Constitution (LV)³ was also amended. Since the revision of 2003, Article 4 paragraph 2 LV reads as follows⁴: "Individual municipalities shall be entitled to secede from the union. The decision on whether to initiate a secession procedure shall be made by a majority of the Liechtenstein citizens

[•] Many thanks to Juliet Reynolds for her careful proofreading.

¹ Verfassungsgesetz vom 16. März 2003 über die Abänderung der Verfassung vom 5. Oktober 1921, LGBl. 2003 Nr. 186, in <https://www.gesetze.li/chrono/2003.186>.

² Chronologically to the different stages of the revision see C.M. Merki (ed.), *Liechtensteins Verfassung, 1992-2003. Ein Quellen- und Lesebuch*, Zürich, 2015, 43-85.

³ Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921. LGBl. 1921 Nr. 15 LR 101, in <https://www.gesetze.li/konso/1921.015>.

⁴ Translation of the current version of the Constitution in https://www.regierung.li/files/medienarchiv/101_05_02_2021_en.pdf.

eligible to vote who reside there. Secession shall be regulated by a law or, as the case may be, by an international treaty. If secession is regulated by a treaty, a second vote shall be held in the municipality after the treaty negotiations have been concluded”.

This “right to secede from the union” also attracted some attention abroad because of its uniqueness. More precisely, however, one should speak of a “right to initiate a secession procedure”⁵. Nevertheless, in the following we will use the term “right to secession”.

When this right is mentioned in the literature, the explanation is often omitted that Article 1 of the Constitution of 1921⁶ was also amended along with Article 4. The first sentence of Article 1 was already part of the Constitution of 1862 (KonV)⁷. It was important for Liechtenstein’s statehood. § 1 KonV reads: “The Principality of Liechtenstein constitutes, by the union of both its regions, Vaduz and Schellenberg, an indivisible and inalienable whole and, as such, an integral part of the German Confederation”.

This journal article will therefore subject Article 4 paragraph 2 of the Constitution to a constitutional analysis, which also takes into account the amendment to Article 1. This analysis will begin with a historical introduction to Articles 1 and 4 (chapter 2). The changes made to Articles 1 and 4 in 2003 were based on proposals by the Princely House (chapter 3). They were critically assessed both by the Venice Commission and by half a dozen experts (chapter 4). Chapter 5 presents the consequences for Liechtenstein of the municipalities’ right to secede. This is followed in chapter 6 by an evaluation of Article 4 paragraph 2 LV, keeping in mind the requirement made by Article 1 LV until 2003, and the promise of the successor to the throne according to Article 13 LV to maintain the integrity of the Principality of Liechtenstein. Chapter 7 draws a brief conclusion.

⁵ Of the same opinion see: A. Ospelt, *Das Selbstbestimmungsrecht der Gemeinden in der Verfassung des Fürstentums Liechtenstein – Ausgewählte Gesichtspunkte*, in P. Sutter (ed.), *Selbstbestimmung und Recht. Festgabe für Rainer J. Schweizer zum 60. Geburtstag*, Zürich, 2003, 165-185, 170, and T. Müller, M. Wohlgemuth, *Kontinuität und Wandel. Zur Verfassungsgeschichte Liechtensteins*, edited by SOuS Stiftung für Staatsrecht und Ordnungspolitik, Eschen, October 2021, in https://sous.li/wp-content/uploads/2021/10/Broschuere_Kontinuitaet_und_Wandel_Web.pdf, 63 and 79, and A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Verfassungsvergleich*, in *Zeitschrift für öffentliches Recht (ZöR)*, 76 (2021), 1167-1194, 1189. See also chapter 6.1.

⁶ See the original version of the Constitution of 5 October 1921, LGBL. 1921 Nr. 15, in <https://www.gesetze.li/chrono/1921.015>.

⁷ Konstitutionelle Verfassung vom 26. September 1862 (KonV), in www.e-archiv.li/D42357.

2. Historical explanations concerning Articles 1 and 4 LV

2.1 The first sentence of Article 1 LV is taken from the Constitution of 1862

The wording of the first article of the Constitution remained (almost) the same from 1862 till 2003. The Constitution of 1921 repeated the first half of the first article from 1862 without any changes. Article 1 paragraph 1 of the Constitution of 1921 reads⁸: “The Principality of Liechtenstein constitutes, by the union of both its regions, Vaduz and Schellenberg, an indivisible and inalienable whole; the region of Vaduz (Oberland) consists of the communes of Vaduz, Balzers, Planken, Schaan, Triesen and Triesenberg; the region of Schellenberg (Unterland) consists of the communes of Eschen, Gamprin, Mauren, Ruggell and Schellenberg”.

In 1862, § 1 KonV was an important constitutional provision for Liechtenstein, which had attained sovereignty in 1806. This article confirmed the following: The territory of the state belongs to the state itself and not the Princely House⁹. The territory of the state is independent of its head of state. Neither the head of state nor the Princely House may dispose of the territory, even in the law on the Princely House¹⁰. The Upper Country (*Oberland*) and the Lower Country (*Unterland*) as well as the eleven municipalities are linked together¹¹.

This crucial article – in a monarchic state – was really worth mentioning again in 1921 – as the Constitution of 1921 continued what started in 1862. It repeated – in addition to Article 1 – quite a lot of phrases and even whole articles of the Constitution of 1862¹².

Prince Hans-Adam II saw something different and rather negative in this provision when he said in his throne speech of 13 March 1997¹³: “If we look at our Constitution, there are two decisive points where the democratic principle does not apply or is at least limited. The first point concerns Article

⁸ Translation of the original version of the Constitution of 5 October 1921: Venice Commission, *Constitution of the Principality of Liechtenstein, incorporating proposed Amendments by the Princely House and Detailing the Amendments proposed by the “Citizens’ Initiative for Constitutional Peace”*, Strasbourg, 27 November 2002, CDL(2002)145, in [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2002\)145-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2002)145-e).

⁹ G. Schmid, *Das Hausrecht der Fürsten von Liechtenstein*, in *Jahrbuch des Historischen Vereins für das Fürstentum Liechtenstein*, 78 (1978), 1-183, in https://www.eliechtensteinensia.li/viewer/image/000000453_78/92/, 113.

¹⁰ G. Schmid, *Das Hausrecht der Fürsten von Liechtenstein*, cit., 113. See also H. Wille, *Die liechtensteinische Staatsordnung. Verfassungsgeschichtliche Grundlagen und oberste Organe*, Liechtenstein Politische Schriften (LPS) 57, Schaan, 2015, in <https://www.eliechtensteinensia.li/viewer/image/000451671/1/>, 250.

¹¹ A. Ospelt, *Das Selbstbestimmungsrecht der Gemeinden in der Verfassung des Fürstentums Liechtenstein – Ausgewählte Gesichtspunkte*, cit., 179.

¹² See for example C. Beck, *Spuren der liechtensteinischen Konstitutionellen Verfassung von 1862 in der Verfassung von 1921. Kontinuität im Wandel*, in *Zeitschrift für öffentliches Recht (ZöR)*, 76 (2021), 1151-1166.

¹³ Landtags-Protokolle 1997, 6 (throne speech of 13 March 1997).

1 of the Constitution: there the Principality is described as an indivisible whole. This means that a municipality may not leave the Principality even if a majority of the citizens of the municipality have decided to leave in a democratic decision based on the rule of law”.

2.2 Article 4 of the Constitution of 1921

Article 4 of the Constitution of 1921 had no predecessor in the Constitution of 1862, which did not yet contain any provisions on the territory of the state or of the municipalities on the subject of changing their borders¹⁴. Rather, it presupposed the existing territory of the two landscapes of Vaduz and Schellenberg in its § 1 KonV¹⁵. In 1921, there was no discussion about Article 4 LV, which remained unchanged till 2003: “Changes in the boundaries of the territory of the state or of individual communes thereof, the creation of new communes and the union of existing ones may take place only by virtue of a law¹⁶”.

There was no criticism of this constitutional provision over all those decades. Since the founding of Liechtenstein in 1719, there had been no change in the external borders of the inhabited area, neither with Austria nor with Switzerland. The same applies to the municipalities: Neither new municipalities were created nor existing ones were abolished. Changes to the municipal boundaries only affected small areas without residential buildings.

3. Proposed amendment by Prince Hans-Adam II

3.1 Reasons for the amendment

When Prince Hans-Adam II first publicly presented his ideas for a constitutional revision in 1993, he mentioned the topic of self-determination. However, he made no reference to the municipalities, but to Liechtenstein’s independence¹⁷. It was not until 1997 that Hans-Adam II mentioned the municipalities and their possible wish to leave the Principality. Hans-Adam II did not mention the term “self-determination” in this context. He merely mentioned a possible problem of the democratic principle: namely, that a municipality may not leave the union even if a majority of its citizens vote

¹⁴ Only § 23 para. 2 KonV referred to the national territory.

¹⁵ P. Bussjäger, *Article 4 LV*, in Liechtenstein-Institut (ed.), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar*, Barend, 2016, verfassung.li (last edited: 3 September 2015), in <https://verfassung.li/Art.4>, para. 2.

¹⁶ Translation: Venice Commission, CDL(2002)145, see footnote 8.

¹⁷ Landtags-Protokolle 1993, 5 (throne speech of 12 May 1993), and Landtags-Protokolle 1993, 631 s. (throne speech of 6 November 1993).

to secede¹⁸. In 1999, the President of the parliament (*Landtagspräsident*) stated that the Prince wanted a change in Article 1 of the Constitution “so that there is no longer talk of an indivisible and inalienable whole, but that from the very beginning, i.e. in the first Article of this Constitution, it is stated that the present union of these two landscapes and 11 municipalities is based purely on free will”¹⁹.

In the Princely House’s constitutional proposal of 2 February 2000 (the so-called “red brochure”), the request to amend Articles 1 and 4 LV was briefly outlined. In its discussion of the proposed version of Article 4 LV, the red brochure stated in particular: “With the amendment of Article 1 and Article 4, the Principality of Liechtenstein could take another decisive step in the realisation of the democratic principle, write constitutional history and lend weight to the worldwide demand for better protection of the right to self-determination, which is in our own interest”.

It was clear from the introductory chapter of the red brochure that the Princely House wanted a reinterpretation of the principle of the right to self-determination that moved away from the traditional understanding. The red brochure read, among other things: “This interpretation of the right to self-determination has, over and over again, led to the suppression of minorities [...]. From Liechtenstein’s point of view, this problematic interpretation of the right to self-determination also has another major disadvantage: we do not differ from our neighbours in race, religion, language or culture. Therefore, our right to self-determination could be endangered in the long term in a united Europe. For this reason, the Principality of Liechtenstein has a substantial interest in a different interpretation of the right to self-determination, in the sense of a right to self-determination at the municipal level”.

In the explanations on Article 4 LV in the constitutional proposal of the Princely House of 1 March 2001 (the so-called “green brochure”), the statement on the realisation of the democratic principle was repeated verbatim. However, a change from the red brochure was that it was even more pointed: “Although membership of the UN, the Council of Europe, the WTO and the EEA has made it possible to better safeguard the sovereignty of the Principality of Liechtenstein and its population’s right to self-determination, the various developments of the recent past show that the sovereignty and right to self-determination of small states and their populations in Europe remain under threat. Only a new interpretation of the right to self-determination at the municipal level will both secure the right to self-determination of the Liechtenstein population in international law in the long term, and prevent the oppression of minorities and ethnic cleansing”.

¹⁸ Landtags-Protokolle 1997, 6 (throne speech of 13 March 1997).

¹⁹ Landtags-Protokolle 1999,1283 (parliamentary session of 16 September 1999).

The government said in its report and motion (*Bericht und Antrag*) of 20 November 2001 concerning the amendment of the Constitution (BuA Nr. 87/2001)²⁰: “The reason for this reform proposal is of a foreign policy nature. In the course of the past thirty years, the Principality of Liechtenstein has certainly succeeded in securing the country’s sovereignty as far as possible through its membership of international organisations. However, in view of the current state of international law, the political freedom of the Liechtenstein people in the form of the right to self-determination is not sufficiently democratically secured externally. Indeed, the right to self-determination is generally granted only to peoples who differ from their neighbours in race, religion, language and culture, but not socially and economically”.

Hans-Adam II’s various statements show that he wanted to send a signal and safeguard Liechtenstein’s sovereignty by including the right to secession in the Constitution²¹.

3.2 Wording of the amendment

In the version found in the red brochure of 2 February 2000 and the green brochure of 1 March 2001, Article 4 paragraph 2 LV reads: “Individual municipalities shall be entitled to secede from the union. Secession shall be regulated by a law or, as the case may be, a treaty. Secession is decided by a majority of the Liechtenstein citizens eligible to vote who reside there. Should a majority agree to secession, the Reigning Prince may, within 30 days, demand that secession be voted on a second time after six months”.

BuA Nr. 87/2001 of 20 November 2001²² provided for a slightly different wording: “Individual municipalities shall be entitled to secede from the union. Secession is decided by a majority of the Liechtenstein citizens eligible to vote who reside there. Secession shall be regulated by a law or, as the case may be, a treaty. If secession is regulated by a treaty, a second vote shall be held after the treaty negotiations have been concluded”.

The wording in Article 4 paragraph 2 of the Princely House’s popular initiative of 2 August 2002²³, which has become applicable law, reads²⁴:

²⁰ BuA Nr. 87/2001, 20, in <https://bua.regierung.li/BuA/pdfshow.aspx?nr=87&year=2001>.

²¹ Of the same opinion A. Ospelt, *Das Selbstbestimmungsrecht der Gemeinden in der Verfassung des Fürstentums Liechtenstein – Ausgewählte Gesichtspunkte*, cit., 170.

²² BuA Nr. 87/2001, cit. in footnote 20, 46.

²³ BuA Nr. 88/2002, in <https://bua.regierung.li/BuA/pdfshow.aspx?nr=88&year=2002>.

²⁴ This translation follows the official translation of the current version of the Constitution: https://www.regierung.li/files/medienarchiv/101_05_02_2021_en.pdf. The translation available to the Venice Commission had read, according to CDL(2002)145 (see footnote 8): “Individual communes have the right to secede from the State. A decision to initiate the secession procedure shall be taken by a majority of the citizens residing there who are entitled to vote. Secession shall be regulated by a

“Individual municipalities shall be entitled to secede from the union. The decision on whether to initiate a secession procedure shall be made by a majority of the Liechtenstein citizens eligible to vote who reside there. Secession shall be regulated by a law or, as the case may be, an international treaty. If secession is regulated by a treaty²⁵, a second vote shall be held in the municipality after the treaty negotiations have been concluded”.

Nothing changed in the wording of the first sentence of Article 4 paragraph 2 LV from the proposal of 2 February 2000. After 2 February 2000, however, the rest of Article 4 paragraph 2 LV was reworded twice. This shows that, at least initially, less weight was attached to the practical aspects (the procedural law) than to the striking formula in the first sentence.

It is unfavourable that the first sentence gives the impression that the municipalities were entitled to an absolute right to secede the union. However, this is not the case²⁶. Regardless of whether the secession of a municipality takes place by law or by international treaty, it requires the consent of the Reigning Prince, the parliament, and, if the conditions are met for a referendum the Liechtenstein citizens²⁷.

4. Evaluations of the proposed amendment

4.1 Evaluation of the amendment by experts

In autumn 1999, the Constitutional Commission of the parliament (*Verfassungskommission des Landtags*) decided to obtain expert opinions from four foreign law experts (Stephan Breitenmoser, Jochen Abr. Frowein, Bernd-Christian Funk and René Rhinow) via the government. In summer 2000, the Princely House submitted the same questions to Franz Matscher and Günther Winkler²⁸.

Stephan Breitenmoser explained that municipalities cannot be entitled to the external right to self-determination²⁹. The Liechtenstein municipalities

law or, as the case may be, a treaty. In the latter event, a second ballot shall be held in the commune after the negotiations have been completed”.

²⁵ In English, this should read “international treaty”. The German-language version speaks in the last sentence of a “staatsvertragliche Regelung”.

²⁶ See also chapter 6.1.

²⁷ BuA Nr. 87/2001, cit. in footnote 20, 33. See also BuA Nr. 135/2002, 18, in <https://bua.regierung.li/BuA/pdfshow.aspx?nr=135&year=2002>.

²⁸ C.M. Merki (ed.), *Liechtensteins Verfassung, 1992–2003. Ein Quellen- und Lesebuch*, cit., 77.

²⁹ S. Breitenmoser, *Rechtsgutachten zu den Verfassungsvorschlägen des Fürstenhauses und der Verfassungskommission des Landtages des Fürstentums Liechtenstein zur Änderung der Verfassung des Fürstentums Liechtenstein*, Muttenz, 31 July 2000, in <https://demokratiebewegung.li/de/dokumente/verfassungsdiskussion/Gutachten-Breitenmoser.pdf/view>, 45 and 137. Of the same opinion J.A. Frowein, *Rechtsgutachten zu den Verfassungsvorschlägen des Fürstenhauses des Fürstentums Liechtenstein zur Änderung*

do not constitute “peoples” in the sense of the United Nations (UN) Covenants because they do not have any demarcation characteristics vis-à-vis the state of Liechtenstein as a whole³⁰. Similarly, *René Rhinow* came to the conclusion that the municipalities are not bearers of the right to self-determination³¹. *Bernd-Christian Funk* also pointed out that the revision proposal set a “new accent”, because it could hardly be classified in the traditional view of the right to self-determination as a basis for legitimising steps towards secession. With regard to Liechtenstein, he wrote, it is neither about national identity nor about political self-determination, nor about protection against human rights violations³². Like *Bernd-Christian Funk*³³, *Jochen Abr. Frowein* emphasised the possible negative consequences of the municipalities’ right to secede. He described such a right to withdraw at any time as a “considerable disruptive factor within the framework of the international legal order”³⁴. By emphasising that withdrawal by a municipality would in any case require the enactment of a law or the conclusion of an international treaty³⁵, *Günther Winkler* did not need to address whether the municipalities were bearers of the right to self-determination. Despite the “far-reaching practical and legal consequences of a withdrawal”³⁶, *Winkler* considered the new provision to be “in conformity with the current Constitution”. This was – in his eyes – because Article 4 paragraph 2 refers to the people, and expands the possibilities of direct democracy and the political freedom of the municipal citizens³⁷.

When asked whether Article 4 paragraph 2 (in the version found in the two brochures) was in conformity with international law, not all of the

der Verfassung des Fürstentums vom 2. Februar 2000, Heidelberg, 17 May 2000, in <https://demokratiebewegung.li/de/dokumente/verfassungsdiskussion/Gutachten-Frowein.pdf/view>, 5, and F. Matscher, *Liechtenstein: Europarechtliche und allgemeinvölkerrechtliche Aspekte des neuen Verfassungsentwurfs des Fürstenhauses*, Wien/Salzburg, 23 November 2000, 6.

³⁰ S. Breitenmoser, *Rechtsgutachten zu den Verfassungsvorschlägen des Fürstenhauses und der Verfassungskommission des Landtages des Fürstentums Liechtenstein zur Änderung der Verfassung des Fürstentums Liechtenstein*, cit., 136.

³¹ R. Rhinow, *Rechtsgutachten im Rahmen der Verfassungsdiskussion im Fürstentum Liechtenstein*, Basel, 18 April 2000, in <https://demokratiebewegung.li/de/dokumente/verfassungsdiskussion/Gutachten-Rhinow.pdf/view>, 27.

³² B.-C. Funk, *Rechtsgutachten über Fragen der Reform der Verfassung des Fürstentums Liechtenstein*, Wien, January 2001, in <https://demokratiebewegung.li/de/dokumente/verfassungsdiskussion/Gutachten-Funk.pdf/view>, 10.

³³ B.-C. Funk, *Rechtsgutachten über Fragen der Reform der Verfassung des Fürstentums Liechtenstein*, cit., 13 s.

³⁴ J.A. Frowein, *Rechtsgutachten zu den Verfassungsvorschlägen des Fürstenhauses des Fürstentums Liechtenstein zur Änderung der Verfassung des Fürstentums vom 2. Februar 2000*, cit., 4.

³⁵ G. Winkler, *Verfassungsrecht in Liechtenstein*, Wien 2001, 60 s. and 63.

³⁶ G. Winkler, *Verfassungsrecht in Liechtenstein*, cit., 60.

³⁷ G. Winkler, *Verfassungsrecht in Liechtenstein*, cit., 61.

experts answered in the negative³⁸. However, all of the experts appointed by the government advised against the implementation of such a right to secession in the Constitution. *Franz Matscher*, who was asked as an expert by the Princely House, also pointed out that the content of the provision remained unclear concerning the secession procedure³⁹. Only *Günther Winkler* did not speak out against the proposed article. He claimed that it meant “nothing essentially new” for the Liechtenstein Constitution⁴⁰.

4.2 Venice Commission’s opinion on the amendments proposed by the Princely House

In Opinion No. 227/2002 of 16 December 2002, the Venice Commission assessed the amendments to the Constitution proposed by the Princely House on 2 August 2002⁴¹. In its opinion, there was nothing to be said against the proposed Article 4 paragraph 2 from the point of view of international law. The fact that a minority of the population could potentially find itself, against its will, in a municipality that had left Liechtenstein did not, in the Venice Commission’s opinion, violate international law⁴².

However, the Venice Commission made it clear that such a right to secession could not be considered an incorporation of the internationally recognised right to self-determination: “36. [...] This proposed right to secede cannot be seen as the incorporation into the Liechtenstein Constitution of the internationally recognised right of (political) self-determination, if only for the reason that the individual municipalities of the Principality are not to be equated with “peoples” as the beneficiaries of that right; even if they were considered as meeting the definition of constitutive states of a federation. Moreover, the international right to secession as an

³⁸ “no” said: S. Breitenmoser, *Rechtsgutachten zu den Verfassungsvorschlägen des Fürstenhauses und der Verfassungskommission des Landtages des Fürstentums Liechtenstein zur Änderung der Verfassung des Fürstentums Liechtenstein*, cit., 137 and R. Rhinow, *Rechtsgutachten im Rahmen der Verfassungsdiskussion im Fürstentum Liechtenstein*, cit., 7 and 32 s. “yes” said: J.A. Frowein, *Rechtsgutachten zu den Verfassungsvorschlägen des Fürstenhauses des Fürstentums Liechtenstein zur Änderung der Verfassung des Fürstentums vom 2. Februar 2000*, cit., 6, F. Matscher, *Liechtenstein: Europarechtliche und allgemein-völkerrechtliche Aspekte des neuen Verfassungsentwurfs des Fürstenhauses*, cit., 8 and G. Winkler, *Verfassungsrecht in Liechtenstein*, cit., 64. No explicit answer B.-C. Funk, *Rechtsgutachten über Fragen der Reform der Verfassung des Fürstentums Liechtenstein*, cit., 14.

³⁹ F. Matscher, *Liechtenstein: Europarechtliche und allgemein-völkerrechtliche Aspekte des neuen Verfassungsentwurfs des Fürstenhauses*, cit., 6.

⁴⁰ G. Winkler, *Verfassungsrecht in Liechtenstein*, cit., 65.

⁴¹ Venice Commission, *Opinion No. 227/2002 on the Amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein*, adopted by the Venice Commission at its 53rd plenary session (Venice, 13-14 December 2002), CDL-AD(2002)32, in [https://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)032-e.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2002)032-e.aspx).

⁴² Venice Commission, *Opinion No. 227/2002*, cit. in footnote 41, para. 37.

exercise of the right to self-determination *stricto sensu* refers to secession against the will of the state from which the “people” secede. In the case of proposed Article 4, paragraph 2, the secession would take place in accordance with a procedure expressly provided for in the constitution of the state concerned. [...]”.

Moreover, the Venice Commission pointed out that the emergence of an even smaller state was not desirable: “39. From the perspective of the effective functioning of the international community of states, opening the way in the Liechtenstein Constitution for the diminution of an already very small state,⁴³ and the creation of a new, even smaller state, would seem to be inappropriate and undesirable, and give cause for critical reactions from that international community. [...]”.

5. Consequences of the revision of Article 4 LV

The doctrine is unanimous that the amendments made to Articles 1 and 4 LV in 2003 have not changed the character of Liechtenstein as a unitary state. The fact that Liechtenstein is referred to as a “union” (*Staatsverband*) and has certain federal elements does not make the country a federal state⁴⁴.

The government said in 2001: “The risk of a municipality leaving the union can be neglected”⁴⁵. No one thought it necessary to regulate the secession procedure by law⁴⁶. To date, neither the government nor the parliament have launched any initiatives. As far as can be seen, there has also been no call from the Reigning Prince to implement this constitutional provision at the legislative level. If the Constitution grants a political right, however, in the author’s opinion it must not be disregarded that a situation could arise in which some citizens – for whatever reason – would like to make use of it⁴⁷.

⁴³ On 30 June 2002, Liechtenstein had 33,678 inhabitants; on 30 June 2021, it had 39,151 inhabitants: Amt für Statistik, *Bevölkerungsstatistik. 30. Juni 2021*, Vaduz, 2021, in <https://www.llv.li/files/as/bevolkerung-30-juni-2021.pdf>, 46.

⁴⁴ P. Bussjäger, *Article 1 LV*, in Liechtenstein-Institut (ed.), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar*, BERN, 2016, verfassung.li (last edited: 31 August 2015), in <https://verfassung.li/Art.1>, para. 47 s. and para. 51.

⁴⁵ BuA Nr. 87/2001, cit. in footnote 20, 21.

⁴⁶ A. Ospelt, *Das Selbstbestimmungsrecht der Gemeinden in der Verfassung des Fürstentums Liechtenstein – Ausgewählte Gesichtspunkte*, cit., 175, expected the legislator to enact an implementation law.

⁴⁷ See the popular initiative for the dissolution of the parliament submitted to the government on 19 January 2022 by opponents of the Corona measures on the basis of Article 48 para. 3 LV. Since the introduction of this right in 1921, signatures had only been collected once (in 1928): W. Marxer, *Direkte Demokratie in Liechtenstein. Entwicklung, Regelungen, Praxis*. Liechtenstein Politische Schriften (LPS) 60, BERN, 2018, in <https://www.eliechtensteinensia.li/viewer/image/000470746/1/>, 212, and P. Vogt, *Landtag*, in *Historisches Lexikon des Fürstentums Liechtenstein online (eHLFL)*, last edited: 31 December 2011, in <https://historisches-lexikon.li/Landtag>.

The Venice Commission already said in 2002: “It is obvious that any secession, in particular in the case of certain municipalities, would have very serious consequences for Liechtenstein”⁴⁸. Indeed, the Liechtenstein economy would be affected if Vaduz or Schaan were to leave⁴⁹. On 31 December 2020, Vaduz had 11 502 jobs (compared to only 5 741 inhabitants), representing 26.9% of all jobs in the country. The figures for Schaan were: 6 037 inhabitants and 10 081 jobs, i.e. 23.6% of all 42 758 jobs in the country. In addition, Vaduz and Schaan are characterised by their very healthy financial situations. Schaan is the country’s transport hub, with a railway station and bus station, as well as a cultural centre with a theatre and cinema.

The withdrawal of Vaduz would not only create practical problems, but also constitutional ones. The Constitution designates Vaduz as the capital and seat of both the national parliament (*Landtag*) and the government (*Regierung*)⁵⁰. Moreover, the courts of first and second instance must be located in Vaduz⁵¹, and the castle is also located in Vaduz. In addition, the shift in power between the Upper Country (*Oberland*) and Lower Country (*Unterland*) brought about by the loss of inhabitants would have to be addressed. The distribution of seats in the parliament is based more or less on the number of inhabitants in the Upper and Lower Country.

If efforts were set in motion in a municipality to initiate the secession procedure, this would lead to nervousness and tensions in the country, not least because there are no regulations governing the procedure⁵². In addition, there would be the problem of international law.⁵³ One thinks in particular of Liechtenstein’s membership of the UN, the Council of Europe and the European Economic Area (EEA)⁵⁴ and its associate membership of Schengen and Dublin, as well as its ties with Switzerland through the Customs Union Treaty⁵⁵. Moreover, the initiation of the secession procedure would likely lead to uncertainty among neighbouring states, both if a municipality wanted to join Austria or Switzerland and if a municipality wanted to become independent. In addition – as the Venice Commission

⁴⁸ Venice Commission, *Opinion No. 227/2002*, cit. in footnote 41, para. 38.

⁴⁹ See the appendix in chapter 8.

⁵⁰ Article 1 para. 2 LV.

⁵¹ Article 97 para. 2 LV.

⁵² See F. Matscher, *Liechtenstein: Europarechtliche und allgemein-völkerrechtliche Aspekte des neuen Verfassungsentwurfs des Fürstenhauses*, cit., 6. A. Ospelt, *Das Selbstbestimmungsrecht der Gemeinden in der Verfassung des Fürstentums Liechtenstein – Ausgewählte Gesichtspunkte*, cit., 176 s., enumerates several open questions.

⁵³ See P. Bussjäger, *Article 4 LV*, cit., paras 64, 66 s.

⁵⁴ Abkommen vom 2. Mai 1992 über den Europäischen Wirtschaftsraum, LGBL 1995 Nr. 68 LR 0.110, <https://www.gesetze.li/konso/1995.068.001>.

⁵⁵ Vertrag vom 29. März 1923 zwischen der Schweiz und Liechtenstein über den Anschluss des Fürstentums Liechtenstein an das schweizerische Zollgebiet, LGBL 1923 Nr. 24 LR 0.631.112, in <https://www.gesetze.li/konso/1923.024>.

already pointed out in 2002⁵⁶ – there would be disapproval among the community of states, especially if a municipality wanted to declare itself independent after leaving the principality.

6. Author's assessment

6.1 No strengthening of the municipalities

As explained in chapter 3, Hans-Adam II justified the revision of Article 4 LV with theoretical considerations (democratic principle, desire for a reinterpretation of the peoples' right to self-determination, securing Liechtenstein's right to self-determination), not with practical needs of the municipalities. He did not ask whether the municipalities wanted such a right. He also did not analyse the position of the municipalities⁵⁷. Whether they were in a position to efficiently carry out the tasks assigned to them in Article 110 LV or whether they wanted more or less autonomy was not examined⁵⁸.

It would have been possible, for example, to declare more provisions of the European Charter of Local Self-Government applicable⁵⁹. In particular, Article 7 paragraph 2 of the Charter is not applicable in Liechtenstein. It awards "appropriate financial compensation for expenses" and – "where appropriate – compensation for loss of earnings or remuneration" for persons engaged in local politics. The members of the local political bodies are not well paid in Liechtenstein. With the exception of the mayor (*Gemeindevorsteher*), it is difficult to find citizens who would accept to reduce their paid work to carry out these tasks almost unpaid in their free time.

In 2003, the municipalities did not receive more rights or means to regulate their affairs on their own responsibility. Nor was there any change in the scope of their opportunities to participate in decisions of the country⁶⁰.

⁵⁶ Venice Commission, *Opinion No. 227/2002*, cit. in footnote 41, para. 39.

⁵⁷ See the compilation of the position of Liechtenstein municipalities in: Congress of Local and Regional Authorities, *Local democracy in Liechtenstein*, Report CG34(2018)15final, 28 March 2018, in <https://www.congress-monitoring.eu/en/21-pays.html>, paras 30-53 and in the summary.

⁵⁸ On municipal autonomy (*Gemeindeautonomie*) see: P.M. Schiess Rütimann, *Article 110 LV*, in Liechtenstein-Institut (ed.), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar*, Bendern, 2016, verfassung.li (last edited: 14 January 2016), in <https://verfassung.li/Art.110>, paras 57-65, 70, 71-91.

⁵⁹ Europäische Charta der kommunalen Selbstverwaltung vom 15. Oktober 1985, LGBl. 1988 Nr. 21 LR 0.140.1, in <https://www.gesetze.li/konso/1988.021>.

⁶⁰ The municipalities have the following political rights: Article 48 paras 2 and 3 LV: convening and dissolving parliament; Article 64 paras 2 and 4 LV: right of initiative; Article 66 paras 1 and 2 LV: right of referendum; Article 66bis para. 1 LV: right of referendum against an international treaty.

Since the constitutional revision of 2003, Liechtenstein municipalities can initiate the secession procedure. However, they do not have the absolute right to secede from the union⁶¹. They cannot leave Liechtenstein without the consent of the Reigning Prince⁶², because both a law regulating the secession and an international treaty with the municipality in question or the neighbouring state it wants to join require the approval of the parliament and of the Reigning Prince⁶³. Until now, the municipalities have never referred to the right to secede or used it as a leverage of blackmail.

6.2 Question of compatibility with Article 1 LV of 1921

The beginning of Article 1 LV in the Constitution of 1921 already stated that: “The Principality of Liechtenstein constitutes, by the union of both its regions, Vaduz and Schellenberg, an indivisible and inalienable whole [...]” Article 4 paragraph 2 LV, which gives each individual municipality the right to secede, could not stand alongside the original Article 1 LV. Therefore, in 2003, it became inevitable to amend Article 1 LV as well.

Liechtenstein’s Constitution does not have an eternity clause. It was therefore permissible to delete the old formulation “an indivisible and inalienable whole”, which had been taken over from the Constitution of 1862 (KonV). Whether the deletion was legitimate is another question. § 1 KonV was directed against the Princely House. Through this provision, its members were prevented from alienating the land as a whole or in individual parts, or from splitting the land and leaving it to different members of the Princely Family⁶⁴.

Article 4 paragraph 2 LV, which was created in 2003, grants competences not to the Reigning Prince or the Princely House, but to the eleven municipalities. Therefore, the situation after 2003 is not comparable to the scenario excluded by § 1 KonV in 1862⁶⁵. However, if a municipality actually wanted to secede and the necessary majorities for a law and/or international treaty could be found for this purpose, the result would be very similar to that if the Princely House had broken off a part of the country: a significant weakening of the Principality of Liechtenstein would occur, if not its self-dissolution.

⁶¹ A. Ospelt, *Das Selbstbestimmungsrecht der Gemeinden in der Verfassung des Fürstentums Liechtenstein – Ausgewählte Gesichtspunkte*, cit., 170.

⁶² P. Bussjäger, *Article 4 LV*, cit., para. 71, and similar A. Gamper, *Autochthoner versus europäischer Konstitutionalismus? Ein Streifzug durch die Liechtensteinische Verfassung*, in H. Schumacher, W. Zimmermann (eds), *90 Jahre Fürstlicher Oberster Gerichtshof. Festschrift für Gert Delle Karth*, Wien, 2013, 263-282, 280.

⁶³ See also BuA Nr. 87/2001, cit. in footnote 20, 13, and BuA Nr. 135/2002, cit. in footnote 27, 16.

⁶⁴ See in particular H. Wille, *Die liechtensteinische Staatsordnung. Verfassungsgeschichtliche Grundlagen und oberste Organe*, cit., 250.

⁶⁵ Of the same opinion P. Bussjäger, *Article 1*, cit., footnote 18.

6.3 Question of compatibility with the declaration of the successor to the throne according to Article 13 LV

Since 1921 and still today, Article 13 LV requires the successor to the throne to “declare upon his Princely honour and dignity in a written proclamation that he will reign over the Principality of Liechtenstein in accordance with the Constitution and the other laws, that he will maintain its integrity, and that he will observe the rights of the Reigning Prince indivisibly and equally”. This provision, too, was taken over verbatim in 1921 from the Constitution of 1862, from § 123 KonV. The Family Contract of 1842 already obliged the members of the Princely House in paragraph VI. to maintain the “integrity of the Principality of Liechtenstein in its entirety, as it is handed over from one ruler of the House to the next, including the melioration and possible enlargements specified in paragraph IV”⁶⁶.

In the author’s opinion, proposing a constitutional provision of one’s own initiative that would allow Liechtenstein to break apart violates the promise to maintain the integrity of the country⁶⁷ made by Hans-Adam II in 1989⁶⁸, prior to receiving the oath of allegiance (*Erbhuldigung*)⁶⁹. The fact that Article 4 paragraph 2 LV is intended to serve as a means to a different end (to strengthen Liechtenstein’s right to self-determination and to demonstrate internationally its commitment to this right), and the fact that the division of the country would not be carried out by the Reigning Prince but would be based on the initiative of Liechtenstein citizens who are eligible to vote and who reside in the municipality, does not change the fact that the right to initiate a secession procedure endangers the unity of the country. The integrity of Liechtenstein is endangered by the right to secession both in territorial terms and by the political tensions that would very likely arise if the secession procedure were to be initiated in a municipality. Even if no majority could ultimately be found in the municipality in question in favour of initiating the secession procedure, or if voters in the municipality changed their minds following the decision to initiate the procedure, this could still shake the state. All the more so if the citizens of a municipality were

⁶⁶ G. Schmid, *Das Hausrecht der Fürsten von Liechtenstein*, in *Jahrbuch des Historischen Vereins für das Fürstentum Liechtenstein*, cit., 162.

⁶⁷ Not so clear P. Bussjäger, *Article 13 LV*, in Liechtenstein-Institut (ed.), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar*, Bendern, 2016, verfassung.li (last edited: 10 September 2015), in https://verfassung.li/Art_13, para. 37.

⁶⁸ Höchstes Handschreiben vom 13. November 1989 betreffend die Übernahme der Regierung durch Seine Durchlaucht Fürst Hans-Adam II., LGBL 1989 Nr. 61, in <https://www.gesetze.li/chrono/1989.061>.

⁶⁹ In 2009, Hans-Adam II. von und zu Liechtenstein, *Geleitwort*, in A. Carrino (ed.), *Rechtsstaat und Demokratie in der Verfassung von Liechtenstein*, Torino, 2009, 9-17, 14 said: “We in the Princely House are basically indifferent as to whether the Principality of Liechtenstein is 160 or only 16 square kilometres. What is decisive for us is rather the question of whether the people in the Principality of Liechtenstein can live happily and freely.” Identically: Hans-Adam II. von und zu Liechtenstein, *Der Staat im Dritten Jahrtausend*, Bern, 2010, 23.

unanimously in favour of secession, but then disagreement arose over the procedure. It would be even more problematic if a municipality were to speak out unanimously in favour of secession, but the necessary majorities for a law or the conclusion of an international treaty could not be found, and the municipality in question had to remain in the Principality of Liechtenstein against its will.

7. Conclusion

Article 4 paragraph 2 LV may sound interesting to foreign constitutional lawyers. For the Liechtenstein municipalities, this provision, introduced in 2003 at the request of Prince Hans-Adam II, brought neither more autonomy nor other advantages.

Article 4 paragraph 2 LV does not provide clear specifications for the secession procedure. The municipalities had not asked for such a right to secession, and both the government and parliament considered it unlikely that any municipality would ever want to secede from the union. It is therefore unsurprising that the secession procedure is still not regulated by law.

It is, on the other hand, surprising that Hans-Adam II paved the way for the breakup of the country with this provision. After all, according to general understanding, the task of the head of state is to hold a country together and work for the integration of all regions and population groups. Moreover, according to Article 13 LV, the successor to the throne must declare before the oath of allegiance to maintain the integrity of the Principality of Liechtenstein.

Questioning the continued existence of the state by amending the Constitution is a daring undertaking⁷⁰. All the more so when half a dozen experts and the Venice Commission make it clear from the outset that the goal of redefining the right of a people to self-determination cannot be achieved through the corresponding new constitutional provision.

⁷⁰ Similar A. Ospelt, *Das Selbstbestimmungsrecht der Gemeinden in der Verfassung des Fürstentums Liechtenstein – Ausgewählte Gesichtspunkte*, cit., 185.

8. Appendix: Data on the Liechtenstein municipalities

		Inhabitants (31.12.2020)	Jobs (full and part time) (31.12.2020)	Assets (2020, CHF million)	Equalisation payments received (2020, CHF million)
Balzers	O	4 684	3 543 (8.3%)	139.5	5.4
Eschen	U	4 523	5 245 (12.3%)	118.2	6.9
Gamprin	U	1 686	2 780 (6.5%)	98.0	3.4
Planken	O	483	87 (0.2%)	28.1	2.4
Mauren	U	4 424	2 370 (5.5%)	107.8	6.6
Ruggell	U	2 404	1 992 (4.7%)	69.1	3.0
Schaan	O	6 037	10 081 (23.6%)	415.9	0
Schellenberg	U	1 109	207 (0.5%)	48.4	5.7
Triesen	O	5 330	3 952 (9.2%)	175.2	3.2
Triesenberg	O	2 634	999 (2.3%)	97.7	7.4
Vaduz	O	5 741	11 502 (26.9%)	782.3	0
Oberland	O	24 909	70.5 %	1 638	18.4
Unterland	U	14 146	29.5 %	441	25.7

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- Bevölkerungsstatistik, 29, in <https://www.llv.li/files/as/bevolkerungsstatistik-31-dezember-2020.pdf>.
- Beschäftigungsstatistik, 12: https://www.llv.li/files/as/i2020_beschaeftigungsstatistik.pdf.
- Regierung des Fürstentums Liechtenstein, Rechenschaftsbericht 2020, 93, in https://www.llv.li/files/srk/rb20_rechenschaftsbericht_gesamt.pdf.
- See also A. Brunhart, *Economic and financial data on Liechtenstein. Data as at 24 June 2021*, edited by the Government of the Principality of Liechtenstein, Vaduz 2021, 35, in <https://www.liechtenstein-institut.li/application/files/3316/3058/6915/Economic-and-financial-data-2021-1-.pdf>.

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