5. Liechtenstein

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1. INTRODUCTION

There are two political levels in Liechtenstein: the national and the municipal. At the national level, the Government, the Reigning Prince and Parliament are the governing bodies of the executive and legislative powers. The judiciary consists, in public law matters, of the Administrative Court and the Constitutional Court as the highest instance. At the local level, consisting of 11 municipalities, the mayor as head of the municipality's administration presides over the municipality, accompanied by an elected, non-professional municipal council.

At both the national and the local levels, Liechtenstein has a broad repertoire of direct-democratic rights. These are clearly regulated by law,[1] the basis being the Constitution,[2] with further elaboration in the Political Rights Act[3] and the Municipality Act.[4] These laws lay down the formal and substantial requirements of the direct-democratic instruments as well as the control procedures and the relevant responsibilities. This applies in particular to the proactive initiative, which demands more guidelines than the rejective initiative.

The use of direct-democratic rights is limited to those entitled to vote, that is Liechtenstein citizens with residence in Liechtenstein, starting with the age of 18 years.[5] Foreigners and Liechtenstein citizens living abroad do not have the right to vote or to sign direct-democratic requests.

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[1] Published in the Liechtenstein Legal Gazette (*Liechtensteinisches Landesgesetzblatt* (LGBl.)) <www.gesetze.li> accessed 29 March 2021.

[2] Constitution of the Principality of Liechtenstein (*Verfassung des Fürstentums Liechtenstein* vom 5. Oktober 1921; LGBl. 1921.015) https://www.regierung.li/media/medienarchiv/101_28_08_2019_en.pdf?t=3, accessed 29 March 2021.

[3] *Gesetz vom 17. Juli 1973 über die Ausübung der politischen Volksrechte in Landesangelegenheiten*; LGBl. 1973.050.

[4] *Gemeindegesetz* vom 20. März 1996; LGBl. 1996.076.

[5] Art. 29(2) Constitution.

2. DIRECT-DEMOCRATIC INSTRUMENTS

The introduction of instruments of direct democracy in Liechtenstein was inspired and influenced by the adoption of corresponding regulations in Switzerland, with cantonal models playing a greater role than the federal one.[6] In practice, three procedures that lead to a popular vote are paramount: the proactive initiative, which can be triggered by the people or municipalities, the rejective initiative, also triggered by the people or municipalities, and the legislature-initiated referendum. Since the introduction of these instruments with the adoption of the new Constitution in 1921, more than 100 national ballots have been held. The scope of the rejective initiative was initially restricted to legal acts and financial decisions. In 1992 it was extended to international treaties. In 2003, a comprehensive revision of the Constitution based on a proactive citizens' initiative launched by the Princely House established several new direct-democratic instruments, but they have not yet been used in practice.[7]

Popular votes can be triggered by Parliament, by the people through the collection of signatures and by municipalities through concurring resolutions of a certain number of municipal assemblies with the goal to initiate a national ballot.[8] However, referendums initiated by municipalities have never achieved great practical relevance compared with citizens' initiatives.

There are no restrictions regarding the place where signatures can be collected. Signatures must be given personally on a sheet of paper as the electronic signature collection has not yet been implemented.

The regulations of direct-democratic rights and procedures at local, that is municipal, level differ from those at national level. In addition to municipal

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[6] See generally Wilfried Marxer, *Direkte Demokratie in Liechtenstein: Entwicklung, Regelungen, Praxis*, Verlag der Liechtensteinischen Akademischen Gesellschaft 2018; Christian Geisselmann, *Direkte Demokratie in der liechtensteinischen Landesverfassung und im österreichischen Bundes-Verfassungsgesetz*, GMG 2017; Martin Batliner, *Die politischen Volksrechte im Fürstentum Liechtenstein*, Institut du Fédéralisme Fribourg 1993; Herbert Wille, *Die liechtensteinische Staatsordnung*, Verlag der Liechtensteinischen Akademischen Gesellschaft 2015; Liechtenstein-Institut (ed.), *Kommentar zur liechtensteinischen Verfassung* www.verfassung.li, accessed 29 March 2021.

[7] See Marxer (n 6) 316–29; the Venice Commission criticised several parts of the amendment: Council of Europe, European Commission for Democracy through Law, Opinion 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).

[8] Peter Bussjäger, Art. 64, 65, 66 and 66bis, in: Liechtenstein-Institut (n 6).

votes on regulations, financial expenditure and other matters,[9] naturalisation votes can also be held at the municipal level; only those municipal citizens[10] who are resident in the municipality concerned are entitled to vote in naturalisation matters.[11]

2.1 Proactive Initiative

The right to trigger a proactive initiative is laid down in the Constitution, which states that the right to table legislative proposals is vested in the Reigning Prince, Parliament and citizens entitled to vote.[12] In contrast to Switzerland, the right of initiative is not limited to constitutional amendments, but extends to ordinary legislation. In contrast, ordinances issued by the Government or administrative acts[13] cannot be targeted by means of a proactive initiative.

According to Article 80(2) of the Political Rights Act, proactive initiatives can be submitted in the form of a prepared draft (formulated initiative) or as a simple suggestion (non-formulated initiative). In practice, the non-formulated initiative has gained hardly any significance – only in 1925, 2008 and 2016 were non-formulated initiatives submitted.[14] The primary reason for this is that in the case of a non-formulated initiative, Parliament only has to debate it. If Parliament rejects the initiative, no popular vote is held. Thus, the non-formulated initiative amounts to a mere agenda initiative. In contrast, the rejection of a formulated initiative necessarily leads to a popular vote, the result of which is binding on Parliament. Thus, the initiators can pursue their objectives more effectively with a formulated initiative, while the effort required to collect signatures is the same for both variants.

The Constitution stipulates that initiatives can be brought about either by a nationwide collection of signatures from voters[15] or, alternatively, by res-

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[9] Art. 41 and 42 Municipality Act.

[10] Liechtenstein citizenship is combined with citizenship of one of the eleven municipalities.

[11] Art. 21(3) Municipality Act.

[12] Art. 64 Constitution.

[13] In 1938, an initiative concerning the authorisation of a wine tavern was rejected by Parliament as this was not a matter for the legislature but an administrative matter; see Marxer (n 6) 140.

[14] In 1925, three non-formulated initiatives to amend the Tax Act were submitted simultaneously, in 2008 the issue was a pension insurance for state employees, in 2016 it was work-related health insurance premiums. All these initiatives had no immediate effect. See Marxer (n 6) 169–74.

[15] Art. 64(2) and Art. 64(4) Constitution; Art. 67(b) and Art. 69 Political Rights Act.

olutions of municipal assemblies.[16] 'Municipal assembly' means the people entitled to vote in the respective municipality, thus not the municipal council or the mayor.

For a proactive legislative initiative, either 1,000 signatures from voters nationwide or the unanimous decision of three municipal assemblies are required.[17] If a proactive initiative targets the Constitution, either 1,500 signatures or resolutions from four municipal assemblies are required.[18] At present, the signature requirements correspond to approximately 5 and 7.5 per cent of those entitled to vote, respectively.[19]

In practice, municipal requests have not become important. The few municipal initiatives that were launched in the 1930s proved to be inadmissible, became invalid or did not come about.[20] The number of signatures which is required to achieve three or four municipal votes may be, depending on the number of inhabitants in the respective municipalities, even higher than the nationwide required 1,000 or 1,500 signatures, respectively. Thus, this instrument has become even less attractive over time, compared with the 1920s and 1930s when the nationwide quorum of signatures was relatively higher.[21] Although the necessary number of signatures at national level, laid down in the Constitution, has been raised several times since 1921, it has not grown to the same extent as the number of voters.[22] At the municipal level, on the other hand, one-sixth of registered voters in a municipality must sign a request, so the number of required signatures has increased steadily since 1921.[23]

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16 Art. 64(2) and Art. 64(4) Constitution; Art. 67(a) and Art. 68 Political Rights Act.

17 Art. 64(2) Constitution.

18 Art. 64(4) Constitution.

19 At the latest national popular vote on 24 November 2019, 20,243 persons were entitled to vote.

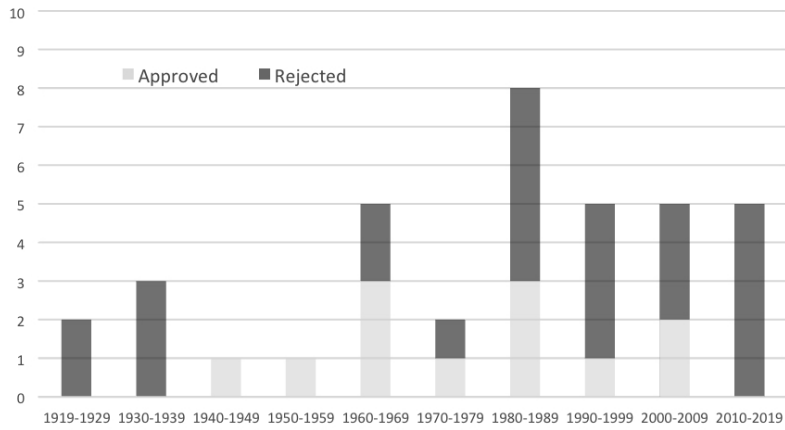
20 Marxer (n 6) 263–68. One initiative was declared inadmissible as it targeted an administrative matter, one initiative failed to achieve a quorum of three municipal resolutions, another initiative became obsolete due to ongoing developments.

21 Moreover, until the 1970s decisions of the municipal assemblies were not taken in ballots but in real assemblies where citizens could submit a request spontaneously, including requests concerning a municipal initiative. Therefore, there was no need to collect signatures.

22 In 1921, either 400 or 600 signatures were required, which corresponded to circa 22 or 33 per cent of voters, respectively (women's suffrage was not yet introduced); see Marxer (n 6) 252.

23 See Marxer (n 6) 251–52 and 268–73.

A majority approval of a proactive initiative at the ballot box is binding on Parliament and the Government.[24] However, for a new law to enter into force, the Reigning Prince must also give the sanction, that is, sign the bill.[25]



Sources: Official announcements after ballots; see Marxer (n 6) 551–56 (updated); (since 2002); Liechtenstein statistics (section 9: *Rechtspflege und Politik*).

Figure 5.1 Number of proactive initiatives voted on (1919–2019)

2.2 Rejective Initiative

The rejective initiative is directed against a resolution of Parliament. This may be a constitutional amendment, a law, a financial resolution or an assent to an international treaty.[26] Just as with the proactive initiative, ordinances issued by the Government[27] or administrative acts cannot be targeted by means of a rejective initiative.

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[24] Art. 66(4) and Art. 66(6) Constitution; Art. 83(6) Political Rights Act.

[25] Art. 65(1) Constitution. The Prince has refused to sign a bill only once: in 1961, after a popular vote on a proactive citizens' initiative on the hunting law.

[26] Art. 66 and 66bis Constitution.

[27] In 1991, the Government decided to quit school education on Saturdays. This was regulated in an ordinance (*Verordnung*). A rejective initiative against the ordinance was declared invalid as it was directed against a law passed by Parliament. As a consequence, a committee launched a proactive initiative to amend the school law by

Parliament may declare resolutions as urgent, so that they are prevented from being subject to the rejective initiative.[28] In practice, this concerns only a few justified cases. For example, the resolution on the state budget for the coming year is regularly declared urgent.[29] Moreover, financial resolutions of Parliament are only subject to the rejective initiative if they exceed a certain threshold value. In the current version, this is a one-off expenditure of 500,000 Swiss francs (ca. 460,000 euros) or a recurrent annual expenditure of 250,000 Swiss francs (ca. 230,000 euros).[30]

Rejective initiatives against legislative or financial resolutions require either 1,000 signatures nationwide or the resolution of three municipal assemblies. Rejective initiatives against constitutional resolutions or resolutions on international treaties require either 1,500 signatures or the resolutions of four municipal assemblies.[31]

A rejective initiative may only be launched against parliamentary resolutions that have been published by means of an official promulgation after the session of the Parliament.[32] This includes all resolutions of Parliament that are in principle eligible for a rejective initiative, which are not declared urgent and, in the case of financial resolutions, exceed the above-mentioned threshold value. A rejective initiative may only be held against the resolution of Parliament as it is published. A rejective initiative against parts of a resolution is not permitted.[33]

The first rejective initiative was launched in 1926, the last one to date in 2018.[34] Twenty-eight ballots have been held during this period following rejective initiatives. Twelve parliamentary resolutions have been accepted, while 16 resolutions have been rejected. Of these 28 resolutions, 17 were bills, ten were financial resolutions and one rejective initiative targeted an international treaty. No rejective initiative has been triggered against a parliamentary resolu-

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introducing the obligation to have school education regularly also on Saturdays. The initiative was rejected in the ballot and the Government was allowed to reduce schooling to five days. See Marxer (n 6) 162, 370, 427 and 436.

28 Art. 66(1) Constitution; Art. 75(4) Political Rights Act.

29 See for example Finance Act for 2020 (*Finanzgesetz vom 7. November 2019 für das Jahr 2020*, LGBl. 2019.314). The act ends with the wording: 'Parliament has declared this legislative resolution to be urgent.'

30 Art. 66(1) Constitution.

31 Art. 70(1a) and 70a(1a) Political Rights Act.

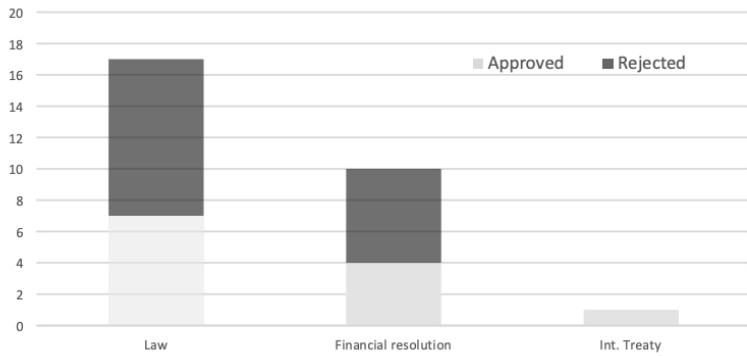
32 Art. 70(1)a, Art. 70a(1), Art. 75(1)b and Art. 76(1) Political Rights Act; Art. 66(1), 66(2) and 66bis(1) Constitution.

33 Marxer (n 6) 185–91.

34 See Marxer (n 6) 551–56.

tion on an amendment of the Constitution so far. Only one popular vote, in the 1930s, has been held as a result of a municipal rejective initiative.[35]

A majority approval at the ballot box supports the resolution taken by Parliament. However, for a new law to enter into force, the Reigning Prince must also give the sanction, that is, sign the bill. He has, so far, always done so when bills had been approved in a ballot after a rejective initiative. If a parliamentary resolution does not find a majority in the ballot, the draft is definitely rejected[36] and no further action of the Prince is required.



Source: See Figure 5.1.

Figure 5.2 Number of rejective initiatives voted on (1919–2019)

2.3 Legislature-initiated Referendum

Parliament may, on its own initiative, submit a resolution which has been approved by the required majority[37] to the people for a decision.[38] As in the

[35] Marxer (n 6) 136–37, 140, 262–73. In 1937, Parliament passed a law banning warehouses against which decisions were taken in five municipalities to hold a referendum. In the vote, the parliamentary draft was adopted with 59.1 per cent of the votes; see Marxer (n 6) 266.

[36] Art. 66(4) and Art. 66bis(2) Constitution.

[37] As a rule, a resolution of Parliament requires the presence of two-thirds of the members of Parliament and a simple majority of those present (Art. 58(1) Constitution). For constitutional amendments, either unanimity at a meeting or a majority of three-quarters of those present at two consecutive meetings is required (Art. 112(2) Constitution).

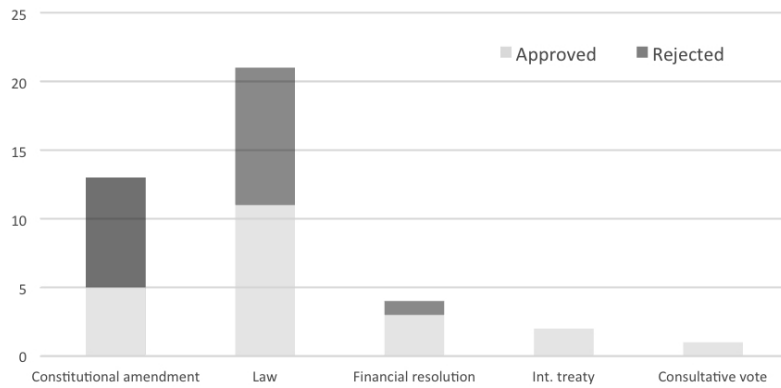
[38] Art. 67(c) Political Rights Act.

case of the rejective initiative, this may concern legal acts (constitutional amendments or laws), financial resolutions with the same expenditure thresholds as with the rejective initiative and assent to international treaties – and again only holds for resolutions that are not declared urgent by Parliament.[39]

While a partial rejective initiative requested by the people is not permitted, Parliament is free to split its resolution into different parts and submit them separately to the vote of the people.[40] However, this has not happened so far.

As with the rejective initiative, a majority approval at the ballot box will support the parliamentary resolution, but in addition the princely sanction is also required. On the other hand, a resolution is definitely rejected if there is no majority in the ballot, and then no further action of the Prince is necessary.

Parliament is also empowered to call a popular vote on the inclusion of individual principles in a law to be enacted.[41] In this case, the vote is consultative, meaning that it has no legally binding effect on Parliament.[42]



Source: See Figure 5.1.

Figure 5.3 Number of legislature-initiated referendums voted on (1919–2019)

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39 Art. 66(1) and (2) and 66bis(1) Constitution.

40 Art. 77(3) Political Rights Act; see also Marxer (n 6) 185–91.

41 Art. 66(3) Constitution.

42 A consultative vote was only held once, in 1968. It concerned the question of whether women's voting rights should be introduced in Liechtenstein. Not only men were asked, but separately also women. The result was that women welcomed this by a narrow majority of 50.5 per cent, while only 39.8 per cent of men were in favour. Voter turnout was less than 60 per cent, whereas in other votes at that time it was usually above 80 per cent. Women's suffrage was finally introduced in 1984 by popular

2.4 Other Instruments of Direct Democracy

The Constitution of 1921 also introduced the possibility for the people to make a request to convene[43] or dissolve[44] Parliament, which results in a popular vote on this issue. At present, 1,000 signatures from Liechtenstein citizens eligible to vote or three resolutions adopted by municipal assemblies are required for the convocation; while for the dissolution of Parliament, 1,500 signatures or four municipal resolutions are required. Only once in 1928 did a request for the dissolution of Parliament come about, but it did not entail a popular vote as Parliament meanwhile had already been dissolved by the Prince and new elections had been called.[45]

In 2003, a comprehensive revision of the Constitution was carried out on the basis of a proactive citizens' initiative launched by the Prince and the Hereditary Prince.[46] The revision was approved in the referendum with 64.3 per cent. In addition to other constitutional amendments, various new direct-democratic instruments were introduced: a motion of no-confidence against the Reigning Prince, an initiative for the abolition of the monarchy, a referendum on the appointment of judges and a secession right for the municipalities. None of these instruments had been made use of at the time of writing. The instruments are briefly described below.

A motion of no-confidence against the Reigning Prince may be tabled by 1,500 voters, on which Parliament must make a recommendation and the people then vote.[47] If the motion is adopted in the popular vote, further deliberations are held within the Princely House in accordance with the Law on the Princely House[48] and measures may be taken by the princely family, such as a warning, disciplinary action or even dismissal of the Prince.

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vote – only men being entitled to vote – after it had been rejected in popular votes in 1971 and 1973. All these popular votes were initiated by Parliament.

43 Art. 48(2) Constitution.

44 Art. 48(3) Constitution.

45 See Marxer (n 6), 211–15.

46 See Frank Marcinkowski and Wilfried Marxer, *Politische Kommunikation und Volksentscheid: Eine Fallstudie zur Verfassungsreform in Liechtenstein* (Nomos 2011). In fact, an appeal was made to the Constitutional Court as to whether the Prince could make use of the citizens' right of initiative. The court ruled that at least the Hereditary Prince was allowed to do so and thus the initiative was permitted: StGH 2002/73 of 3 February 2003; see also Marxer (n 6) 246.

47 Art. 13ter Constitution.

48 *Hausgesetz des Fürstlichen Hauses Liechtenstein* vom 26. Oktober 1993; LGBl. 1993.100.

A proactive initiative by 1,500 voters may also be submitted to abolish the monarchy.[49] If the initiative is adopted in the referendum, Parliament is charged with drawing up a constitution on a republican basis and submitting it to another popular vote. The Reigning Prince may also submit a proposal for a new constitution. The second popular vote is required by the Constitution and thus is to be qualified as a law-initiated referendum. If monarchy is abolished in this way by majority vote, the Reigning Prince cannot veto the decision of the people.[50]

Referendums initiated by the Government or the Reigning Prince (executive-initiated referendums) do not exist in Liechtenstein.

2.5 Instruments at the Municipal Level

Direct-democratic rights at the municipal level are regulated in the Municipality Act, while procedural regulations sometimes refer to provisions of the Political Rights Act.[51] Direct-democratic rights at the municipal level are exercised in the municipal assembly, that is, an assembly of the people entitled to vote in the specific municipality, as opposed to the competences of the mayor and the municipal council, which are elected by the voters for a term of office of four years.[52] The municipal council can also order a decision to be taken at the ballot box instead of at an assembly.[53]

The municipal assembly has, among other competences, the power to enact the municipal ordinance and certain regulations and to take decisions that involve high expenditures, that is, expenditures exceeding 35 per cent of municipal revenues in the case of one-time expenditures and exceeding 20 per cent of municipal revenues in the case of recurring expenditures. In other words, these municipal resolutions are subject to a law-initiated referendum.[54] The municipal ordinance can determine whether further powers fall within the competence of the municipal assembly.[55]

In addition to this law-initiated referendum, certain resolutions of the municipal council are subject to the rejective initiative. A rejective initiative may be launched against decisions involving expenditures exceeding a threshold value that the municipal ordinance may set between 100,000 and 300,000

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[49] Art. 113 Constitution.
[50] Art. 113(2) Constitution.
[51] Art. 88(2) Municipality Act.
[52] See Marxer (n 6) 335–58.
[53] Art. 26 Municipality Act.
[54] Art. 25 (2)–(5) Municipality Act.
[55] Art. 25(3) Municipality Act mentions certain other regulations, the establishment of municipal institutions and membership in special purpose associations.

Swiss francs.[56] In addition, a rejective initiative may be launched against certain other resolutions of the municipal council, regardless of the expenditure involved, including the approval of the municipal accounts, the setting of the tax surcharge, the enactment of the zoning plan and building regulations and the imposition of levies.[57]

Proactive initiatives may be launched with regard to the same subject matters as those that are subject to the rejective initiative.[58]

Both the rejective and the proactive initiative at municipal level can be triggered by a sixth of the respective municipal electorate, thus the number of required signatures has increased by time.[59] If a rejective or a proactive initiative is launched, the proposal concerned must be tabled at a municipal assembly or, which is more common today, put to a ballot vote.[60]

Since the revision of 2003, individual municipalities are allowed to secede from the union. The majority of the resident voters of the municipality concerned decides on the initiation of the procedure. Secession is eventually effected by law or a state treaty; in the case of a state treaty a second vote must be held in the municipality after the treaty negotiations have been concluded.[61]

3. LEGAL LIMITS

The relevance of legal limits, both at the national and the municipal level, is mainly limited to the instrument of the proactive initiative. In the case of the rejective initiative and the legislature-initiated referendum, the proposal in question has undergone a parliamentary approval process, so that no further substantive examination of the subject matter of the vote is required.

3.1 Substantive Limit: Compliance with the Constitution and International Treaties

The Political Rights Act provides for a preliminary examination of proactive initiatives at the national level by Parliament. Upon registration, initiatives are examined by the Government to determine whether they comply with the Constitution and international treaties. The report of the Government on this

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[56] Art. 41(1) Municipality Act.
[57] Art. 41(2) Municipality Act.
[58] Art. 42(1) Municipality Act.
[59] Art. 41(1) and 42(1) Municipality Act.
[60] Art. 26 Municipality Act; Art. 41(1) and 42(1) Municipality Act; see Marxer (n 6) 355–56.
[61] Art. 4(2) Constitution; see Marxer (n 6) 227–29; Peter Bussjäger, Art. 4, in: Liechtenstein-Institut (ed.) (n 6).

question is sent to Parliament for further action.[62] Parliament considers the initiative request at its next session. If it finds that the initiative is not in conformity with the Constitution or international treaties in force, it declares it null and void, that is, inadmissible.[63] The initiators may appeal to the Constitutional Court against a declaration of nullity of Parliament.[64] The preliminary examination procedure was introduced in 1992 in the course of Liechtenstein's accession to the European Economic Area in order to avoid signature collections and popular votes on issues that contradict the Constitution or international law.[65]

Two proactive initiatives have been declared inadmissible by Parliament since 1992. One initiative on climate protection was declared inadmissible in 2004.[66] The initiative wanted all future laws and ordinances in Liechtenstein to be in conformity with climate protection goals. The Government had concerns about the compatibility with existing international treaties and also criticised that the tiered structure of the legal system was not taken into account, as any one law would have an effect on numerous other laws.[67] Parliament followed this argumentation.[68] The initiators substantiated their submission with two legal opinions,[69] but the Constitutional Court supported the inadmissibility decision of Parliament.[70]

In 2013, a parliamentary proposal on pension insurance for state employees was announced, aiming at significant pension cuts with the goal of restructuring the state pension fund.[71] As opposition to the solution chosen by Parliament, a citizen registered a proactive initiative with his own proposal.

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62 Art. 70b(1) Political Rights Act.

63 Art. 70b(2) Political Rights Act.

64 Art. 70b(3) Political Rights Act.

65 Law of 17 September 1992 on the amendment of the Political Rights Act; LGBl. 1992.100.

66 See Marxer (n 6) 155–56.

67 Regierung des Fürstentums Liechtenstein, *Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Vorprüfung der angemeldeten Volksinitiative auf Erlass eines Klimaschutzgesetzes* (BuA, 2004/79), Vaduz 2004, https://bua.regierung.li accessed 29 June 2020.

68 Landtag des Fürstentums Liechtenstein, *Landtagsprotokoll 2004*, 1093–1105, www.landtag.li accessed 29 June 2020.

69 Giovanni Biaggini, *Zur Verfassungsmässigkeit der Volksinitiative 'Klimaschutzgesetz'. Stellungnahme zum Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein zuhanden des Initiativkomitees, 2004*; Anne Peters, *Gutachten zur Frage der Völkerrechtskonformität einer Initiative für ein Klimaschutzgesetz in Liechtenstein*, 2004.

70 StGH 2004/70.

71 See Marxer (n 6) 156.

Based on a report prepared by two experts,[72] the Government recommended that Parliament declare the initiative inadmissible.[73] The experts had concluded that the initiative proposal to reduce the pensions of state employees was too radical and therefore violated well-acquired rights and also violated the principle of equality due to unequal treatment of different state employees. The initiator appealed against the decision of Parliament[74] to declare the initiative inadmissible. The Constitutional Court found no reason for inadmissibility and ruled that the initiative was sufficiently balanced to be admissible.[75] Thus Parliament finally admitted the initiative in March 2014.[76]

3.2 Formal Limits

3.2.1 Clarity of the question

When registering or submitting a proactive initiative it must be clearly evident what form it takes: non-formulated or formulated initiative, launched as a popular or municipal initiative.[77] This is checked by the Government during the registration procedure. In the case of a rejective initiative, clear designation of the parliamentary resolution against which the rejective initiative is directed is required.[78]

In the case of proactive initiatives, the initiators often give names and titles to their request that are as appropriate or as mobilising as possible and may play some role in the debates leading up to the popular vote. The title is usually also adopted in the official governmental information on the forthcoming

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[72] Erich Peter and Peter Bussjäger, *Gutachten zur Frage der Vereinbarkeit der Volksinitiative Pensionskasse win-win zum Gesetz über die betriebliche Personalvorsorge des Staates (SBPVG) mit der Verfassung des Fürstentums Liechtenstein*, Zürich/Bendern 2013.

[73] Regierung des Fürstentums Liechtenstein, *Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Vorprüfung der angemeldeten Volksinitiative 'winwin50' zum Gesetz über die betriebliche Personalvorsorge des Staates (SBPVG)* (BuA, 2013/85), Vaduz 2013, https://bua.regierung.li accessed 29 June 2020.

[74] Landtag des Fürstentums Liechtenstein, *Landtagsprotokoll 2013*, 1761–79, www.landtag.li accessed 29 June 2020.

[75] StGH 2013/183, www.gerichtsentscheidungen.li accessed 29 June 2020.

[76] Landtag des Fürstentums Liechtenstein, *Landtagsprotokoll 2014*, 72–84, <www.landtag.li> accessed 29 June 2020. The initiator had already started a second initiative while the Constitutional Court was still deciding on the first one. Finally, both initiatives were admitted and the initiator withdrew neither the first nor the second one. Thus, both initiatives were brought to the ballot on the same day and both were rejected. See also Marxer (n 6) 156, 161, 173, 260, 283, 408.

[77] Art. 68(3), Art. 69(5) and Art. 80(2) Political Rights Act.

[78] Art. 68(3)a and Art. 69(5) Political Rights Act.

popular vote and even on the ballot paper.[79] If the initiators do not include a title themselves, a neutral name is chosen by the Government (for example, 'Draft of the initiative committee to amend the law XY').

The wording on the ballot paper is defined by the Political Rights Act. In the case of proactive initiatives, the question on the ballot paper must be: 'Do you want to accept the draft XY?' If a counterproposal of Parliament is submitted as an alternative to the proactive initiative, two questions are put to the voters: 'Do you wish to accept the initiators' draft? or Do you wish to accept Parliament's counterproposal?'[80] If there are more proposals on the same subject, the law again provides for a predefined, clear wording.[81] For this reason, there is no scope for suggestive or manipulative action by the authorities on the voting issue.[82] In the case of a rejective initiative, there is also no leeway as the request is directed against a clearly formulated resolution of Parliament.[83]

In order to avoid manipulation by the authorities, the Government is obliged to give room for the arguments in favour and against the initiative in the official voting brochure, so that both sides can put forward their arguments. These are the initiators or the committee of a proactive or rejective initiative on the one hand and the Government, Parliament or other stakeholders on the other. According to decisions of the Constitutional Court, the authorities, including the Reigning Prince, are also obliged to act fairly in referendum campaigns.[84]

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[79] For example, voting questions on the ballot papers were: 'Do you want to accept the draft of the initiative committee "For Life" (*Für das Leben*)'? (2005); 'Do you want to adopt the draft of the initiative committee "Yes – so that your vote counts" (*Ja – damit deine Stimme zählt*) for the amendment of the national constitution?' (2012). The same titles were used in the official information sent to the voters before the popular vote (for example, Regierung des Fürstentums Liechtenstein, Information zur Volksabstimmung vom 29. Juni und 1. Juli 2012 über das Initiativbegehren zur Abänderung der Landesverfassung ('Ja – damit deine Stimme zählt') (Source: Archive of the author)).

[80] Art. 83(1) and 83(2) Political Rights Act.

[81] Art. 83(3)–(5) Political Rights Act.

[82] There is no precedent for highly misleading titles chosen by initiators for their initiative. A legal entitlement that the title chosen by the initiators will be adopted by the authorities does not exist.

[83] Parliamentary resolutions against which a rejective initiative may be taken are listed in public announcement after the parliamentary sessions. In the case of a rejective initiative, it must be clearly stated against which resolution the referendum is directed.

[84] *StGH* 1990/6 of 2 May 1991, in: *Liechtensteinische Entscheidsammlung 1991*, 133. The Constitutional Court criticised the practice of not giving the initiators of the popular initiative for the introduction of the State Treaty referendum the opportunity to present their arguments in the Government's official voting brochure. Since then, equal space has been given to the pro and contra sides in the voting brochure. In another decision, the Constitutional Court criticised the unbalanced appearance of the Prime

3.2.2 Consistency of the subject matter

Liechtenstein law does not explicitly require unity of subject matter in the case of proactive initiative requests.[85] However, judgments of the Constitutional Court and the Administrative Court are partially contradictory on this issue.[86] In a judgment in 2002, the Administrative Court even explicitly distanced itself from a different assessment of the Constitutional Court.[87]

Irrespective of this, both a formulated proactive initiative and a rejective initiative must clearly show the will of the initiators. In the case of a rejective initiative, this means that it must be clearly evident which parliamentary resolution is targeted. Among other things, this rules out the possibility of a single rejective initiative directed against two parliamentary resolutions. If necessary, two separate signature sheets have to be used in order to give those entitled to vote the opportunity to express their opinion and wish on both proposals separately – when signing the rejective initiative as well as finally at the ballot box. This is to identify the clear will of those eligible to vote. Nevertheless, since a partial rejective initiative is not allowed, a rejective initiative can always only be directed against a resolution of Parliament as a whole, even if the resolution addresses different subject matters, which may be the case, for example, with a resolution amending numerous provisions of a law. Parliament is allowed to split a resolution into parts in order to announce them separately for the rejective initiative. However, the law does not provide for the bundling of different resolutions into a single bill, and this is therefore not permitted and has not occurred in practice.

The requirement that the request must be clear also applies to formulated initiatives. This rules out, above all, the possibility of two different concerns being taken up in a single initiative. This would undermine a clear and separate expression of intent on each issue raised. However, experience has shown that, for example, in a proactive initiative for a comprehensive constitutional review, numerous constitutional articles were drafted in a single proposal for adoption or rejection.[88]

Minister and the Reigning Prince on state television before the popular vote on the European Economic Area and demanded fairness and balance in the campaign (*StGH* 1993/8 of 21 June 1993, in: *Liechtensteinische Entscheidsammlung 1993*, 91). See also Marxer (n 6) 319–20; Wille (n 6) 400.

[85] Batliner (n 6) 148–51; VBI (Administrative Complaints Court) 2002/96 of 12 November 2002, 121.

[86] Marxer (n 6) 125–32.

[87] *VBI* 2002/96; see Marxer (n 6) 131.

[88] Popular initiative launched by the Prince and the hereditary Prince to amend the constitution; ballot on 16 March 2003; approved with 64.3 per cent Yes votes; voter turnout of 87.7 per cent (www.abstimmung.li).

3.2.3 Consistency of the form

The consistency of the form concerns the proactive initiative as well as the rejective initiative. According to Article 69(5) of the Political Rights Act, it is inadmissible to join together completely different types of requests in the same proposal. Thus, a proactive initiative must concern either the Constitution or an ordinary law, but not these two levels at the same time. A rejective initiative must be directed against only one clearly identifiable parliamentary resolution, be it a constitutional, legislative or financial resolution. Finally, it is not permitted to join together a rejective and a proactive initiative in the same submission.[89]

Government must reject requests that violate the consistency of the form. However, initiators are allowed to remedy the defect within a reasonable period of time.[90] According to a 1964 opinion of the Constitutional Court, a reasonable period is four weeks in the case of a rejective initiative and six weeks in the case of a proactive initiative.[91]

3.2.4 Proposal to cover the costs

At the national level, initiators are required to submit a financing proposal in case of a proactive initiative that has cost effects. According to Article 64(3) of the Constitution, if the initiative request concerns the enactment of a law that is not already provided for by the Constitution and its implementation would result either in a non-current expenditure not already provided for by the finance act or in an expenditure over a longer period, such request shall only be considered by Parliament if it is accompanied by a proposal on how to cover the necessary funds. The Political Rights Act specifies that this applies if a one-off new expenditure exceeds 500,000 Swiss francs and a recurrent annual expenditure exceeds 250,000 Swiss francs.[92]

In practice, the requirement of a cover proposal has had little effect, at least in recent times. The last inadmissibility decisions based on this ground date back very far.[93] In 1935, municipal initiatives for a reduction in the mortgage interest rate[94] and a reduction in the price of electricity were rejected because

[89] See Marxer (n 6) 125–32, with reference to the decision of the constitutional court *StGH* 1964/3, in: *Entscheidsammlungen der Liechtensteinischen Gerichtshöfe*; ELG (Decisions of Liechtenstein Courts) 1962–1966, 224; and *StGH* 1986/10, in: *Liechtensteinische Entscheidsammlung*; LES (Collection of Court Decisions) 1987, 152–53.

[90] Art. 69(6) Political Rights Act.

[91] *StGH* 1964/3, in: ELG 1962–1966, 225.

[92] Art. 80(3).

[93] Marxer (n 6) 132–39.

[94] Expert opinion of the Constitutional Court (*Staatsgerichtshof*, StGH) of 1 July 1935. Parliament took note of the expert opinion in the session of 30 August 1935 and consequently the initiative was not admitted.

there were no proposals for cover.[95] Most initiatives do not have cost implications, or at least do not entail expenditures in the amounts specified by the law. This applies, for example, to changes to the electoral law, equality issues, etc.

The law does not specify in which form a financing proposal must be made. An indication that the costs are to be covered from general tax revenues or financial assets may already be sufficient.[96] It should be borne in mind that the requirement for a financing proposal was formulated at a time when Liechtenstein was in an extremely weak financial position.

It is also unclear at what stage of the procedure a financing proposal should be made. In its ruling on the admissibility of the proactive initiative for climate protection, the Constitutional Court stated that the cover proposal does not already need to be provided when the initiative is registered, but only when it is submitted with the valid number of signatures.[97] However, the sense of such an interpretation can be doubted, as the purpose of a preliminary examination is to avoid unnecessary signature collection and voting. Finally, the cover proposal might also have an influence on the decision of those who are asked to sign an initiative. Therefore, it seems appropriate to include the coverage proposal, if at all necessary, simultaneously with the application for a proactive initiative.[98]

3.2.5 Blocking periods

Periods within which a direct-democratic request is inadmissible can also be counted among the formal limits. With regard to initiatives, such blocking periods only make sense in the case of the proactive, but not the rejective, initiative. If a proposal has been rejected in a popular vote, a proactive initiative concerning the same question may only be submitted after expiry of a period of two years.[99] A request to dismiss Parliament can only be made once every year.[100] In contrast, there are no blocking periods for the motion of no-confidence against the Reigning Prince and the other instruments which were introduced in 2003.

3.3 Limits at the Municipal Level

The municipal council is responsible for the examination and admission of proactive and rejective initiative applications. It examines the formal and substantive requirements and rejects a request if it is unlawful or relates to an issue

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95 See Marxer (n 6) 136–37.
96 Marxer (n 6) 138–39.
97 StGH 2004/70, Rz 2.4.
98 See Marxer (n 6) 137–39.
99 Art. 70(3) Political Rights Act.
100 Art. 70(3) Political Rights Act.

that falls within the competence of other municipal authorities or a national authority.[101] Decisions of the municipal council on citizens' initiatives may be appealed to the Government and subsequently to the Administrative Court.[102]

Proactive initiatives at municipal level are inadmissible if the deadline for launching a rejective initiative concerning the same issue has passed unused or a rejective initiative concerning the same issue has been submitted. In the case of building regulations, zoning plans and other municipal council decisions of a general nature, a proactive initiative can only be launched once at least two years have passed since the relevant decision.[103] At municipal level, there is no requirement for a proposal to cover the necessary funds.

4. INSTITUTIONAL AND PROCEDURAL FRAMEWORK

4.1 National Level

4.1.1 Proactive initiative and agenda initiative

In order to launch a proactive citizens' initiative, the initiators have to register the initiative with the Government.[104] The Government checks the compliance of the initiative with the formal limits set out above and rejects it if necessary. Initiatives which do not comply with the provisions shall be returned by the Government to the first signatory for the attention of all initiators, indicating the fault, and shall be invalid if the fault is not remedied within a reasonable time.[105] Appeals against governmental decisions can be brought before the Administrative Court.[106] If the initiative is deemed formally admissible, the Government examines whether it is in conformity with the Constitution and existing international treaties and forwards its report to Parliament for a decision on its substantive admissibility.[107] The report is not binding on Parliament. The initiators may hold informal discussions with the parties or provide them with documents, arguments and other material. These are eventually used by Members of Parliament during parliamentary sessions, but are not included in the parliamentary documents. If Parliament finds the initiative to be inadmis-

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[101] Art. 43 Municipal Act.

[102] Art. 120 and 121 Municipal Act; State Administration Act (*Landesverwaltungspflegegesetz* vom 21. April 1922, LGBl. 1922.024).

[103] Art. 42(2) Municipal Act.

[104] Art. 80(4)(a) Political Rights Act.

[105] Art. 69(6) Political Rights Act.

[106] Art. 2(3) *Gesetz vom 21. April 1922 über die allgemeine Landesverwaltungspflege* (LGBl. 1922.024), www.gesetze.li accessed 29 June 2020.

[107] Art. 70b(1) Political Rights Act.

sible, the initiators are not heard by Parliament, but they may lodge an appeal with the Constitutional Court. If the initiative is ruled to be inadmissible, the collection of signatures may not be carried out.[108]

There are too few complaints against decisions on initiatives for a clear picture as to who is entitled to complain when and in what matters to emerge. Past complaints, however, do show that initiators are legitimised when an initiative is rejected[109] or when the authorities conduct an unfair referendum campaign.[110] Voters are also entitled to appeal against the Government's approval of what they consider to be an inadmissible initiative.[111] Furthermore, voters may also complain against the withdrawal of a vote if they discover irregularities, such as a one-sided and strongly opinion-forming campaign by the authorities or one-sided representations in the voting information prior to a vote.[112] Complaints are therefore possible in many ways and by various parties concerned.

Once a proactive initiative has successfully passed the preliminary examination, it is published by official announcement and the collection of signatures may begin.[113] The signatures that have been certified by the respective mayor's office must be submitted to the Government within six weeks.[114]

The Government reports to Parliament on the successful collection of signatures for the initiative. Parliament may approve the initiative and thus elevate it to a parliamentary resolution, which is subject to the rejective initiative.[115] If Parliament rejects the initiative, which is usually the case, a ballot vote is mandatory.[116] If the initiative contains a withdrawal clause, it may be withdrawn by the initiators as long as the date of the vote has not yet been fixed.[117] The voting date, which may not be later than three months after the debate in Parliament,[118] will be scheduled by the Government via official announcement

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[108] Art. 70b(2) and 70b(3) Political Rights Act.

[109] StGH 2004/70 regarding the proactive initiative for climate protection; StGH 2013/183 regarding initiative on pension insurance for state employees.

[110] StGH 1993/8 regarding the legislature initiative on access to the European Economic Area.

[111] VBI 2002/96 and StGH 2002/73 regarding the proactive initiative on revision of the constitution. The courts had to rule whether the initiators – the reigning and the hereditary prince – were legitimised to register a proactive initiative.

[112] StGH 1990/6 regarding the proactive initiative for the introduction of the state treaty referendum, in which the Court ruled that an unbalanced information in the official voting leaflet was unlawful.

[113] Art. 80(4)(a) Political Rights Act.

[114] Art. 80(4)(b) Political Rights Act.

[115] Art. 82(1) Political Rights Act.

[116] Art. 82(2) Political Rights Act.

[117] Art. 82b Political Rights Act.

[118] Art. 72(1) Political Rights Act.

at least four weeks before the vote.[119] Parliament may submit a counterproposal for the vote.[120] In this case, a 'double or multiple yes' voting system applies, that is, voters who approve more than one proposal are also asked which proposal they prefer in case both/several proposals are approved by the majority.[121] The result of the vote shall be officially announced.[122]

If a bill is adopted by a majority of voters, the sanction of the Reigning Prince is required for it to enter into force. If the Prince refuses to sign it, the law cannot enter into force.[123] The entry into force of the enacted legal provisions must be communicated by promulgation and published in the Liechtenstein Legal Gazette.[124]

4.1.2 Legislature-initiated referendum and rejective initiative

Once Parliament has adopted a resolution (be it a constitutional amendment, a law, a financial resolution or assent to an international treaty), it may decide by majority vote to hold a referendum on it. If it does not do so and does not declare the resolution urgent, the resolution is published by means of an official announcement.[125] This triggers the deadline for launching a rejective initiative: the required number of signatures, which must be certified by the respective mayor's office, must be submitted to the Government within 30 days.[126] There is no need to register the collection of signatures against a parliamentary resolution before starting with the collection. As mentioned earlier, it must be clear against which publicly announced parliamentary decision the rejective initiative is directed.

If the collection of signatures has been successful, the Government must organise the popular vote,[127] the result of which it must publish. If the resolution does not obtain the majority of all valid votes in the ballot, it is definitely rejected. If it is approved by a majority, the Reigning Prince must sanction it in order for it to enter into force.[128] If the Prince refuses the sanction, the resolution cannot enter into force. If the Prince grants the sanction, the entry

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[119] Art. 25(2) Political Rights Act.
[120] Art. 82(3) Political Rights Act.
[121] Art. 83(5) Political Rights Act.
[122] Art. 77(4) Political Rights Act.
[123] Art. 9 and 65 Constitution.
[124] Art. 3(a)–(c) Promulgation Act (*Kundmachungsgesetz* vom 17. April 1985, LGBl. 1985.041).
[125] Art. 70(1a) and 70a(1) Political Rights Act.
[126] Art. 70(1)(a) and 70a(1) Political Rights Act.
[127] Art. 72(1) Political Rights Act.
[128] Art. 65(1) and 66(5) Constitution.

into force must be promulgated by the Government and the relevant resolution must be published in the Liechtenstein Legal Gazette.[129]

4.2 Municipal Level

In the municipalities, resolutions that are subject to the rejective initiative are publicly announced[130] so that a rejective initiative can be launched within the set period of time by means of the required number of signatures of those entitled to vote in the municipality concerned. A request for a rejective initiative must be registered with the mayor of the municipality no later than 14 days after the announcement of the resolution, and it must be submitted within one month of the announcement.[131] The vote must take place within four months of the rejective initiative being submitted. The procedure for proactive initiatives largely corresponds to that for the rejective initiative.[132]

5. PRACTICAL RELEVANCE OF THE LEGAL LIMITS

The legal barriers to direct-democratic procedures are not discouraging in Liechtenstein. The people have decision-making rights in matters of the Constitution as well as concerning laws, finances and international treaties. At the national level, the most frequently used instruments of direct democracy are the rejective initiative directed against resolutions of Parliament and the proactive initiative. Further direct-democratic instruments, which have not attained any practical relevance yet, include the vote of no-confidence in the Reigning Prince, the abolition of monarchy and the right of the people of a municipality to secede from the union. In addition to popular votes triggered by the people, Parliament also has the right to submit its own decisions to a popular vote.

The formal and substantive examination of proactive initiatives is quite appropriate. The preliminary examination procedure at both the national and the municipal level prevents signatures from being collected for requests that are not admissible – be it at the national level, because they are in conflict with the Constitution or international treaties, or be it at the municipal level, because they are in conflict with national law or competences of other bodies. In practice, it rarely happens that a proactive initiative fails to pass the hurdle

[129] Art. 3(a)–(c) Promulgation Act.
[130] Art. 41(4) Municipality Act.
[131] Art. 41(3) Municipality Act.
[132] Art. 41(5) Municipality Act.

of preliminary examination. Furthermore, an appeal against an inadmissibility decision of the national Parliament can be lodged with the Constitutional Court, or with the Government and the Administrative Court in case of an initiative at the municipal level.

6. CONCLUSION

Widely developed direct-democratic rights of those eligible to vote are in place in Liechtenstein, at both the national and the municipal level. This refers not only to the broad range of direct-democratic instruments, but also to the moderate legal hurdles imposed on them. Accordingly, popular votes take place quite frequently compared with most other countries. Moreover, most direct-democratic procedures have a binding effect on the representative bodies, that is, the Government and Parliament, which motivates citizens additionally to become politically active. The purpose of the preliminary examination procedure for proactive initiatives is to prevent direct-democratic proposals that contradict the Constitution or relevant international treaties. In the case of proactive initiatives at the municipal level, requests are to be avoided which contradict national law or do not fall within the competence of the municipality. In general, therefore, the principle of popular sovereignty does not dominate, but rather the compatibility of direct-democratic procedures with the rule of law.[133] This is accompanied by decision-making powers of the Constitutional Court, for example in questions of the admissibility of initiatives. The principle of sovereignty of the people is additionally weakened by the Reigning Prince's right of sanction, since most popular votes at national level require the Prince's sanction before a draft can enter into force. Direct democracy in Liechtenstein is therefore embedded in a complex system of Government and is shaped by the principle of rule of law.

[133] See Sabine Jung, *Die Logik direkter Demokratie* (Springer 2001) regarding the difference between the principle of popular sovereignty and the principle of the rule of law.