

## CoCEAL Presentation:

# National Report LIECHTENSTEIN

Dear Ladies and Gentlemen

Thank you for giving me the opportunity to present a report on the small state of Liechtenstein as part of the CoCEAL project. As you have seen, my written report is rather detailed. To give you an overview, I would like to split my explanations now into two parts: In part one I will summarise the most important points to understand Liechtenstein's "Landesverwaltungspflegegesetz" which is our law of administrative procedure. And in the second part I will explain the most important aspects of an Austrian influence on it.

### **PART ONE: The Landesverwaltungspflegegesetz**

The Landesverwaltungspflegegesetz (abbreviated: LVG) was enacted in 1922. It combines procedural and organisational law as well as administrative with appeal proceedings. For the whole general administration in Liechtenstein, which is a single-level administration divided between the state and the municipalities, the LVG is the central codification and only supplemented by special laws in areas of special administration (like taxes or real estate with trade and construction). The LVG is the most extensive administrative procedure law of all the German-speaking countries and has a highly casuistic approach. Let me – to give you an impression of this – only cite the full translated (and complicated) title of this law, which is "law of general state administration (the administrative authorities and their auxiliary organs, the procedure in administrative matters, the procedure of administrative enforcement and of administrative crime)". The LVG consists of 172 articles with about thirty-five thousand words overall, meaning, that on average each article contains the huge amount of approximately 200 words.

One year before the LVG, i.e. in 1921, a new constitution had been enacted in Liechtenstein which set up the Principality of Liechtenstein according to its famous article 2 as a

constitutional, hereditary monarchy on a democratic and parliamentary basis. This constitution – still in force today – strongly emphasized the Liechtenstein national independence, especially from Austria, and the “Rechtsstaatlichkeit”. The LVG was the first law (and thus of symbolic importance) in a series of many laws to fill this new constitutional frame with national (and especially procedural) legislation. The new constitution for the first time set up in administrative matters a sequence of appeal with authorities and instances all situated domestically here in Liechtenstein, whereas formerly they had been situated partly in Austria (i.e. in Vienna and Innsbruck). The main procedural principles of the new constitution – binding also for the LVG – were: legality; procedural economy; the right of complaint; the requirement to state reasons; and in total a comprehensive legal protection (especially before the newly established administrative court called “Verwaltungsbeschwerdeinstanz” and before the “Staatsgerichtshof” as the new constitutional court for extraordinary jurisdiction).

## **PART TWO: The Austrian influence**

From an only chronological point of view, the LVG of 1922 is the first enacted code of administrative procedure in the German-speaking countries. The Austrian Administrative Procedure Act (APA) timely “followed” in 1925. Nevertheless, the LVG is, in its substance, for sure some kind of collection of foreign (and mostly Austrian) drafts, law and jurisprudence. However, the details are even today not yet deeply clarified. What we know, is, that the LVG is mainly the elaboration of one single person: Wilhelm Beck, a famous Liechtenstein lawyer and politician. Unfortunately, Beck does not provide for precise source information in his work or writings. Among his bequeathed books at least there is a good deal of Austrian scholarly literature of that time (like Tezner, Herrnritt, Mannlicher/Coreth) which suggests a corresponding Austrian influence on him.

About the origin of the LVG there are different opinions. One opinion is that the LVG is largely an adaptation by Wilhelm Beck of one of the several preliminary drafts for an APA in Austria from the time before the First World War. While the further elaboration of the APA in Austria was delayed because of that war, Liechtenstein succeeded in enacting the LVG by means of Austria’s preliminary works (simply by copying them). However, like an analytical investigation shows, there is among those preliminary drafts (with the respective leading persons Schwartzenu 1913, Bernatzik 1914, Schuster von Bonnot 1918 or Davy 1919) none that would fit completely as the basis of receipt for the LVG. Another opinion therefore is that the LVG, in the version of its enactment, was still the largely unamended

draft with – so to say – elaborating notes and comments by Wilhelm Beck that became, due to the urgency of its enactment, legal wording. Be that as it may, the chronological paradox Austria 1925 versus Liechtenstein 1922 with the striking fact, that much of the wording of the LVG corresponds to the Austrian APA, remains.

The four elements according to the CoCEAL questionnaire (i.e. completeness of investigation, right to a hearing, giving reasons requirement, and remedies) are all emphasised in the LVG. In particular with regard to the remedies, you can see the characteristics of this unconventional law very well. In my report I called it “a remedial hypertrophy” – a too much of remedies. The LVG contains a wide range of about 10 different remedies (like *Vorstellung*, *Beschwerde*, *Wiederherstellung*, *Nichtigerklärung* and so on), but neither their very designation is uniform/consistent nor their competitive relationships are always clear. It seems that the Liechtenstein legislator (or Wilhelm Beck as his “assistant”) created with a large number and a variety of different remedies a remedial *non plus ultra* for curing every imaginable constellation of a violation of subjective public rights of a citizen. In other words: The LVG wants to state a quantitative maximum degree of legal protection for the subjects of administrative law. The “Rechtsstaat” is understood as the state of many legal remedies. And this is complemented with a tendency to extend the complaint legitimacy beyond party status, i.e. to grant it also to only (legally or factually) interested persons. And it is also complemented with an unlimited review by the administrative court “*Verwaltungsbeschwerdeinstanz*”: So this court’s cognition extends to questions of law, to questions of fact and even to the exercise of discretion; and this court has the power to make reformatory decisions, which means to decide completely new in the merits of the case brought before him.

Apart from such specific Austrian influence on the LVG legislation, there is another influence which I would call “atmospheric”. Because of the proximity of the Princely House of Liechtenstein to the Austrian Habsburg dynasty, the Prince resided in the surroundings of Vienna until 1938. During the 19<sup>th</sup> century his Viennese “*Hofkanzlei*” (princely court chancellery) had acted as a key link between the reigning Prince and the Liechtenstein government in Vaduz because it conducted their official communication. At earlier times the chancellery even had served as a political court of appeal, which means as some sort of administrative court (that was, however, presumably *de facto* insignificant). The “*Hofkanzlei*” was staffed with (partly noble) administrative or legal experts as civil servants, who had been educated at Austrian universities and were experienced in the Austrian administration or courts; they

were appointed by the Prince alone. The same applies to the “Landesverweser” (head of government) who led the official administrative business in Vaduz. (You find in my written report the famous case of the interim “head of government” Josef Peer, who was from 1917 to 1925 at the same time while active in Liechtenstein also “Hofrat” at the Austrian Administrative Court in Vienna.) Like this, the influence of the Austrian administrative tradition, represented and practised by these men and at that time highly respected, spread as far as Liechtenstein.

Additionally, the high degree of replication from the law of both neighbouring countries Austria and Switzerland made it all times vital for Liechtenstein to expose its (also administrative) jurisdiction to a certain degree to Swiss and Austrian influence. Therefore, some judges had to be appointed also from unbiased Austrian experts in order to maintain a knowledge transfer to Liechtenstein’s legal system. Without questioning the independence of the Liechtenstein jurisdiction, they were meant to contribute their expert knowledge from their home country by deciding cases as judges under the Liechtenstein law. Although this form of influence is – as I mentioned initially – rather “atmospheric” and not yet investigated in every detail, it must nevertheless be reckoned with.

Thank you for your attention.