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**PRINCIPAUTÉ DU LIECHTENSTEIN / PRINCIPALITY OF
LIECHTENSTEIN / FÜRSTENTUM LIECHTENSTEIN / КНЯЖЕСТВО
ЛИХТЕНШТЕЙН**

**The State Court of the Principality of Liechtenstein Staatsgerichtshof des
Fürstentums Liechtenstein**

Anglais / English / Englisch / английский

XVIIth Congress of the Conference of European Constitutional Courts

Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles

National Report of the State Court of the Principality of Liechtenstein

I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles

1. Does the constitutional court or equivalent body exercising the power of constitutional review (hereinafter referred as the constitutional court) invoke certain constitutional principles (e.g. separation of powers; checks and balances; the rule of law; equality and non-discrimination, proportionality, reasonableness, human dignity, etc.) in the process of constitutional adjudication? To what extent does the constitutional court go in this regard? Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

First of all, we would like to state that herein, the terms "explicit and implicit constitutional principles" are understood to mean leading principles that are either expressly laid down in a constitution or have been deduced from it by court practice and doctrine.

However, it is difficult to delimitate what provisions and principles are understood to be such "constitutional principles". Not least because in Liechtenstein, there is neither unalterable constitutional law in the sense of Art. 79 of the German *Grundgesetz* nor – with the exception of the monarchy – constitutional law that can be revised only under more stringent requirements in the sense of the Austrian fundamental constitutional laws (Art. 44(3) B-VG).¹ Nevertheless, Liechtenstein constitutional doctrine also knows structural principles which guide the Constitution and its interpretation.² These principles are the principle of the rule of law, the principle of constitutional monarchy, the principle of democratic and parliamentary basis, the separation of powers, and the unitary state.³

Since for the reasons stated above, these principles do not have a superior rank in applicable constitutional law,⁴ the only way they are used by the State Court is mostly in connection with

¹ See Bussjäger, Einführende Bemerkungen zur liechtensteinischen Verfassung, in: Liechtenstein-Institut (ed.): Kommentar zur liechtensteinischen Verfassung. Online-Kommentar, Bender n 2016, www.verfassung.li, Chapter V. A., margin no. 78.

² Batliner, Aktuelle Fragen des liechtensteinischen Verfassungsrechts (1998), p. 15, margin no. 15; Bussjäger, Bemerkungen, margin no. 80.

³ Batliner, Fragen, p. 14 et seq., margin no. 14. Similar, but without mentioning the monarchy and the unitary state, also: Winkler, Verfassungsgesetzgebung und Verfassungsinterpretation in Liechtenstein (2015), p. 154. Critically on the question of the unitary state as a structural principle: Bussjäger, Bemerkungen, margin no. 82.

⁴ As a matter of principle, any amendment to the constitution requires either unanimity or the consent of three quarters of the members of the Diet in two subsequent meetings (Art. 112(2) LV [*Landesverfassung*, Liechtenstein Constitution]). A special procedure is reserved for the abolition of the monarchy, which requires an initiative by at least 1,500 citizens that is accepted by the people in a referendum. Then, another referendum must be held on the new Constitution (Art. 113 LV).

the interpretation of certain provisions of the Constitution. For example, it is the constant practice of the State Court in the review of the constitutionality of laws to grant leeway to the legislator "for reasons of democracy and the separation of power" to allow for the legislator's legal policy.⁵ The principle of the separation of powers, which is not laid down explicitly in the Constitution, is considered to be a pivotal principle of a state under the rule of law and as a part aspect of the guarantee of due process (Art. 33).⁶

However, there is an exception to the rule that there is no ranking within the Constitution in the sense of superior constitutional principles and "common constitutional law" as far as the relationship of the Constitution to EEA law is concerned: it is the State Court's constant practice that EEA law shall prevail as long as it does not "violate fundamental principles and core content of the fundamental rights of the Liechtenstein Constitution."⁷ Accordingly, any laws that violate EEA law will be repealed as unconstitutional.⁸

For lack of any case of application, no case law exists as to the question what these fundamental principles and this core content are supposed to be in concrete terms. However, one can assume that the State Court will certainly consider the fundamental rights contained in the ECHR to be "fundamental principles and core content of the fundamental rights". Theoretically, however, it is conceivable that EEA law may also affect the mentioned structural principles of the constitution, such as democracy or the separation of powers⁹. In this case, EEA law would not prevail over national law, and any laws issued in the implementation of such EEA law would have to be repealed as unconstitutional.

The mentioned "structural principles and core content" must be distinguished from other principles, such as where the State Court speaks of "*Verfassungsprinzipien*"¹⁰ or "*Verfassungsgrundsätze*"¹¹; these two terms are used more or less as synonyms,¹² and both translate as "constitutional principles". Sometimes, fundamental rights are also called constitutional principles,¹³ as is done in the list of questions to be answered here (principle of human dignity, principal of equality and non-discrimination).

As to the differentiation between explicit and implicit constitutional principles and their mutual relationship, the following should be noted:

The Constitution contains a catalogue of fundamental rights (Art. 27bis – Art. 44 LV), which for example explicitly states the right to equality (Art. 31 LV) or the right to human dignity

⁵ For many others: StGH 2015/109, cons. 3.3.1, with reference to StGH 2011/70, cons. 3.2; StGH 2010/154, cons. 2.4.

⁶ For many others: StGH 2014/138, cons. 7.2, with reference to StGH 2010/2, cons. 4.2.

⁷ For many others: StGH 2013/196, cons. 2.4.1, with reference to StGH 2011/200, cons. 3.2; StGH 1998/61, cons. 3.1.

⁸ Cf. StGH 2006/94, cons. 3.

⁹ Bussjäger, Bemerkungen, margin no. 90.

¹⁰ StGH 2008/128, cons. 3.1; StGH 2005/37, cons. 2.7.

¹¹ StGH 2014/067, cons. 4.1; StGH 2014/13, cons. 2.7.

¹² In StGH 2014/063, cons. 3.1, for example, the prohibition of exaggerated formalism is called a "*Verfassungsgrundsatz*"; in StGH 2008/128, cons. 3.1, and others it is also called a "*Verfassungsprinzip*".

¹³ Such as in StGH 2014/13, cons. 2.7, concerning the principle "*ne bis in idem*"; StGH 2009/71, cons. 8.1, and StGH 2008/177, cons. 2.1, concerning the principle of equality, and StGH 2007/67, cons. 4 und StGH 2004/3, cons. 2.2, concerning "*nulla poena sine lege*".

(Art. 27bis LV) to be fundamental rights. These provisions are interpreted and developed by the State Court in consideration of its practice so far and taking into account the comments in legal doctrine.

For example, the principle of proportionality – which is not explicitly laid down in the Constitution – plays an important role in discussing the question of the admissibility of state interference with fundamental rights. The State Court recognises the principle of proportionality as a constitutional principle, which as a pivotal principle for the limitation of power pervades the whole legal and constitutional system.¹⁴ In this, the State Court stresses that this is "merely" a constitutional principle rather than a separate fundamental right.¹⁵

Under the practice of the State Court, other principles result from considering various provisions of the constitution viewed together, or can be deduced from provisions of the Constitution. These include for instance the rule of law or the separation of powers, which are discussed in more detail below.

The State Court applies both explicit and implicit constitutional principles in handling the constitutional complaints submitted to it. Typically, these are so-called "individual complaints", by which an individual claims the violation by a decision or order of a public authority of rights guaranteed by the Constitution.¹⁶ In such cases, the State Court checks whether any constitutional rights of the individual concerned have been or have not been violated. Doing so, it also applies the constitutional principles created in its practice.

2. *What constitutional principles are considered to be organic in your jurisdiction? Are there any explicit provisions in the constitution setting out fundamental principles? Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?*

No explicit constitutional principles are laid down in the Constitution. However, as has been discussed in item (1) above, the State Court deduces certain principles from the Constitution.

In its practice, the State Court has time and again referred to the following principles:

The rule of law is deduced from Art. 92(4) LV, according to which all acts of the Liechtenstein administration are subject to the limits set by the Constitution, by the laws, and by the provisions of international treaties. Even in matters where the law has provided the administration with discretionary power, the limits set to it by the laws must be strictly observed.¹⁷

¹⁴ StGH 2012/176, cons. 4.3, and StGH 2012/67, cons. 6.3, both with reference to StGH 2010/44, cons. 3 and 6.1.

¹⁵ StGH 2011/156, cons. 5.1; StGH 2010/044, cons. 6.1.; StGH 2010/048, cons. 7.

¹⁶ Art. 15 of the Act dated 27 November 2003 on the State Court (*Staatsgerichtshofgesetz*, StGHG), LGBL. [*Landesgesetzblatt*, Liechtenstein Law Gazette] 2004 Nr. 23.

¹⁷ On this: Bussjäger, *Bemerkungen*, margin no. 100.

It is from this principle of the rule of law that the principle of legality has been deduced, which has the character of a fundamental right in various fields.¹⁸ This is undisputed for tax law¹⁹ and criminal law²⁰ including administrative criminal law²¹. In addition, the State Court has ruled that this principle is also important in the course of checking for violations of fundamental rights and, to a limited extent, also in the course of investigating alleged acts of arbitrariness.²²

Concerning the principle of democracy, the State Court has ruled: "The democratic character of the Constitution is intentional and emphasised. Therefore, the Constitution wants free, unaltered, effective, non-manipulated, and sufficiently differentiated votes to express the free will of the people. (...) The Constitution must be interpreted in a holistic and harmonistic manner. Its provisions concerning the rights of the people are to emphasise their high democratic ranking. Therefore, they must if in doubt be interpreted in such a way that the democratic fundamental character is allowed to prevail."²³ As is evident from this example, the principle of democracy serves as an interpretation aid here.

Furthermore, the State Court has ruled that there is the principle of the separation of powers, which it deduces from the separation of the Diet (Chapter V), the Prince (Chapter II), the government (Chapter VII), and the courts of law (Chapter VIII) in the Constitution.²⁴

On the one hand, the structural principles of the Constitution serve as a guide in the interpretation of the Constitution itself; on the other, they also constitute a normative standard of review as to the constitutionality of laws.

However, since - with the exception of the abolition of the monarchy - there are no principles in the Liechtenstein ranking of legal rules that are subject to special formalities in their creation or alteration, the structural principles do serve as an interpretation aid but do not constitute a standard of review for constitutional law itself. This means that in Liechtenstein there is no constitutional law that is substantively unconstitutional, i.e. which violates structural principles of constitutional law.

In addition to these structural principles deduced from concrete provisions of the Constitution and from explicitly stated fundamental rights, the State Court also recognises a number of unwritten fundamental rights in its practice.²⁵ The example quoted most often is probably the

¹⁸ Such as in StGH 2008/89, cons. 2.1; StGH 2007/112, cons. 4.1.

¹⁹ On the principle of legality in tax law, see StGH 2011/13, cons. 2, with reference to StGH 2002/14, cons. 3, with particular reference to StGH 2002/70, cons. 5; StGH 2003/74, cons. 2; StGH 2009/124, cons. 2.2; StGH 2009/181, cons. 3.2, and StGH 2010/24.

²⁰ StGH 2008/89, cons. 2.1.

²¹ StGH 2001/49, cons. 6.

²² StGH 2007/112, cons. 4.1. The State Court has carried out such a review in the context of the prohibition of arbitrariness in the issue of land zoning, for example (StGH 2003/71, cons. 6).

²³ StGH 1986/10 = LES 1987, 148 et sqq.

²⁴ StGH 1983/6 = LES 1984, 73 et seq.

²⁵ See in this context Bussjäger, *Eigenständige Verfassungsdogmatik am Alpenrhein?*, in: Wolf (ed.), *State Size Matters* (2016), p. 21 et sqq.

prohibition of arbitrariness.²⁶ Since its key decision StGH 1998/45, the State Court has considered the prohibition of arbitrariness to be an unwritten fundamental right.

Furthermore, it is the practice of the State Court to consider the "prohibition of exaggerated formalism" to be an unwritten or deduced constitutional principle; the State Court has also called it an unwritten fundamental right.²⁷

Other unwritten fundamental rights are the mentioned principle of legality in tax law and criminal law²⁸ and the fundamental right of subsistence.²⁹ The State Court is willing to deduce constitutional guarantees from the list of fundamental rights (which date from 1921) that cannot be deduced from the wording alone, such as the right to a fair trial (Art. 31(1) LV and Art. 6(1) and (3) ECHR)³⁰ or the prohibition of exaggerated formalism, which was in turn deduced from the prohibition of arbitrariness.³¹ The State Court has called "good faith" to be a constitutional principle.³² It has also mentioned the "constitutional principle of fair trial" contained in Art. 6 ECHR.³³

The State Court has ruled that personal freedom pursuant to Art. 32(1) LV is quasi the fallback fundamental right for laying down banking secrecy as part of the rules for the protection of privacy.³⁴ In other judgments, the State Court has considered banking secrecy to have a material rank.³⁵

It is also notable that the State Court considered human dignity to be a component of other fundamental rights – doing so on the basis of Swiss practice and doctrine – even before it was made a separate fundamental right in 2005 in Art. 27bis LV. In particular, the right to due process has also been considered to be a consequence of human dignity.³⁶

3. *Are there any implicit principles that are considered to be an integral part of the constitution? If yes, what is the rationale behind their existence? How have they been formed over time? Do they originate from certain legal sources (e.g. domestic constitutional law or the constitutional principles emanating from international or*

²⁶ In detail on this: Vogt, Das Willkürverbot und der Gleichheitsgrundsatz in der Rechtsprechung des liechtensteinischen Staatsgerichtshofes (2008), in particular p. 336 et sqq.; partly in reply: Hoch, Staatsgerichtshof und Oberster Gerichtshof in Liechtenstein, in: Schumacher/Zimmermann (ed.), 90 Jahre Fürstlicher Oberster Gerichtshof. Festschrift Gert Delle Karth (2013), p. 427.

²⁷ StGH 2005/37, cons. 2.7, with further references. In StGH 2014/063, cons. 3.1.

²⁸ StGH 2000/39; cf. Vogt, Willkürverbot, p. 354 et seq.

²⁹ StGH 2004/48; cf. Vogt, Willkürverbot, p. 356 et seq.

³⁰ Cf. Vogt 2008, p. 365 et seq.

³¹ Cf. Vogt 2008, p. 363.

³² StGH 2015/015, cons. 4.4; StGH 2015/060, cons. 5; StGH 2014/147, cons. 3.2, and many more.

³³ StGH 2009/2, cons. 2.3.

³⁴ StGH 1996/42 = LES 1998, p. 185 (189 cons. 2.2); see also Beck/Kley 2012, Freiheit der Person, Hausrecht sowie Brief- und Schriftengeheimnis, in: Kley/Vallender (ed.), Grundrechtspraxis in Liechtenstein (2012), p. 139, margin no. 16.

³⁵ StGH 2005/50 = LES 2007, p. 396 (405 cons. 4.7); see also Beck/Kley 2012, Freiheit, p. 139, margin no. 16.

³⁶ Such as the constant practice initiated by StGH 1996/6 = LES 1997, p. 148. See also Bussjäger, Der Schutz der Menschenwürde und des Rechts auf Leben, in: Kley/Vallender (ed.), Grundrechtspraxis in Liechtenstein (2012), p. 118, margin no. 12.

European law; newly-adopted principles or ones re-introduced from the former constitutions)? Have academic scholars or other societal groups contributed in developing constitutionally-implied principles?

The answer to this question can more or less be found in what has been said above. The State Court deduces part of these principles from various explicit provisions of the Constitution, as has been demonstrated with the principle of legality or the separation of powers, for example. There has been no reference to superior principles of international law in the practice of the State Court so far.

It should be noted that the State Court makes reference to the current status of opinion in doctrine in general; particular note should be made of the large extent to which the State Court takes a comparative-law approach. In this context, it is in particular also the practice of the Swiss *Bundesgericht* – which is open towards the recognition of unwritten principles – that has contributed to the development of the State Court's practice.³⁷ This does not exclude that the State Court will deduce unwritten fundamental laws from the Constitution on its own, as can be demonstrated by the principle of the already mentioned prohibition of arbitrariness, in which the State Court oriented itself at the opinion of doctrine in Switzerland, which demanded that the prohibition of arbitrariness be recognised in Switzerland.³⁸

4. *What role has the constitutional court played in defining the constitutional principles? How have basic principles been identified by the constitutional court over time? What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in defining and applying those principles? How much importance falls upon travaux préparatoires of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles? Do universally recognised legal principles gain relevance in this process?*

No method of interpretation has been laid down in the Liechtenstein Constitution. Doctrine therefore assumes that the Liechtenstein Constitution is subject to open interpretation.³⁹

The State Court, too, has stressed the openness of the Constitution's interpretation and the essential equivalence of the usual methods of legal interpretation.⁴⁰ Interpretation on the basis of wording as well as historic interpretation were and are important as the starting point of every effort of legal interpretation.⁴¹ The State Court also uses what is called "Constitution-conformal interpretation",⁴² stating with reference to the practice of the Austrian *Verfassungsgerichtshof*⁴³ that this cannot be applied where interpretation oriented at the

³⁷ Cf. Bussjäger, *Verfassungsdogmatik*, p. 21.

³⁸ Cf. Bussjäger, *Verfassungsdogmatik*, p. 22.

³⁹ Bussjäger, *Bemerkungen*, margin no. 57.

⁴⁰ StGH 2005/78, cons. 5.

⁴¹ StGH 2012/75, cons. 3.3.

⁴² In StGH 2012/75, cons. 3.3, this form of interpretation is stated to be a particularly important method of interpretation for a constitutional court with reference to StGH 2005/78, cons. 5, and StGH 2000/19.

⁴³ VfSlg 19.341/2011.

wording as well as interpretation based on the historic intentions of the legislator arrive at a unequivocal result.⁴⁴

Typically, the government's drafts for assessment already include explanations, which then also form the basis for the "*Bericht und Antrag*" (BuA, Report and Motion), the accompanying text for government bills. However, the BuA does not have the rank of a law and cannot claim priority for interpretation. Still, the BuA provides information on the legislator's intentions, which makes it an important source for historic and also for teleological interpretation.⁴⁵ But the State Court will also access other documents concerning a law's process of creation, such as the protocols of the Diet or the reports of committees that have studied that law.⁴⁶

5. *What is the legal character of the constitutional principles? Are they considered to be the genesis of the existing constitutional framework? What emphasis is placed upon the fundamental principles by the constitutional court in relation to a particular constitutional right? Are basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe fundamental principles in connection with a specific constitutional right as complementary means of the latter's interpretation? Can the basic principles in your jurisprudence constitute a separate ground for unconstitutionality without their connection with a concrete constitutional norm? Is there any requirement in law placed upon the judicial acts of enforcement of constitutional principles?*

The legal character of the constitutional principles has been explained in the above comments. Partly, the constitutional principles serve as an interpretation aid, in particular for fundamental rights, as is demonstrated by the example of the principle of proportionality. Partly, these principles are part of unwritten fundamental rights, as has also been shown. Their violation can have the consequence that a specific government act is repealed as unconstitutional.

As has been explained, it may also happen that a lower-ranking rule is repealed for a violation of constitutional law because that rule violates certain constitutional principles. Insofar, these principles also form the review standard for a rule. A good example is the case that served as the basis for the decision StGH 2010/024, which was about fees and supervision charges laid down in Liechtenstein in Art. 30 of the *Finanzmarktaufsichtsgesetz* (Act Concerning the Financial Market Authority). The State Court first of all noted that the principle of the legality of public charges is an unwritten constitutional right.⁴⁷ It then continued to state: "For public charges, it is required that the defining elements for the charge, the circle of the persons liable to the charge, and the assessment of the charge be formally regulated in the law in a sufficiently specific way. In a democracy, the legislator is to decide on the charges imposed upon the citizens. The legislation procedure is best suited to discuss the reasons and opposing reasons in a public discourse and to regulate the charges in such a way that the

⁴⁴ StGH 2012/75, cons. 3.3.

⁴⁵ StGH 2009/200, cons. 3.4.

⁴⁶ See for example StGH 2015/015, cons. 3.1; StGH 2013/118, cons. 3.4.4; StGH 2013/36, cons. 3.1.

⁴⁷ StGH 2010/024, cons. 3.

encumbrance can be suitably predicted by the persons concerned. The requirements to specific definition in the formal law are the higher the more grave the infringements are that may be connected with the charges in question." In the subsequent review as to whether the relevant provision of the Act Concerning the Financial Market Authority was consistent with these principles, the State Court finally arrived at the opinion that it was not, since the amount of the fees and supervision charges was not regulated in the law with sufficient clarity.

6. *What are the basic principles that are applied most by the constitutional court? Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution has the constitutional court made in forming and developing such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.*

In practice, what is applied most frequently is the unwritten fundamental rights, primarily the prohibition of arbitrariness, the prohibition of exaggerated formalism, and the principle of good faith. The connected questions are discussed on an essentially regular basis in the State Court's practice. As has been stated above, these unwritten fundamental rights have been developed by the very practice of the State Court and have been applied by it in practice since then.

What was of particular importance was the State Court's judicature on the relationship between Liechtenstein law and EEA law, which assumes a general precedence of EEA law and therefore provides it with direct applicability.⁴⁸ The State Court has specified this practice in that directly applicable EEA law must not violate the fundamental principles and core content of the Liechtenstein Constitution.⁴⁹

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the constitution? Unamendable (eternal) provisions in constitutions and judicial review of constitutional amendments.

1. *Do the constitutional principles enjoy a certain degree of superiority in relation to other provisions in the basic law? How are constitutional principles and other constitutional provisions related to international law and/or to the European Union law? Are there any provisions in international or the European Union law that are deemed superior than the national constitutional principles? If yes, how are such higher international provisions applied with regard to the national constitutional principles? What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?*

⁴⁸ Cf. StGH 1995/14 = LES 1996, p. 119 (122).

⁴⁹ StGH 2006/94.

With the exception of the mentioned fundamental principles and core content of the fundamental rights of the Liechtenstein Constitution – which, as has been explained above, prevail over EEA law – and the special procedure for the abolition of the monarchy (Art. 113 LV), there is no ranking within constitutional law. This also means that the State Court may typically review amendments to the Constitution only as to whether they have been created in a constitutional manner (fulfilment of the necessary requirements of consent in the Diet; if necessary, consent of the people in a referendum; consent of the Prince).

As to the role of international law, the Liechtenstein Constitution does not contain any express rule on the relationship of international law and Liechtenstein law. However, Liechtenstein has committed itself to the monistic system, according to which international law and Liechtenstein law are part of a unitary system of rules.⁵⁰ On the other hand, this does not result in the general superiority of international law over Liechtenstein law. On the contrary – pursuant to Art. 104(2), international treaties are subject to review by the State Court for constitutionality. This means that as a matter of principle, international treaties are lower placed than the Constitution in the ranking of the legal system. For the reasons stated above, this does not apply to the EEA, and it does not apply to the ECHR, either. According to the State Court's practice, it has a quasi-constitutional rank.⁵¹

As has already been explained, the State Court grants special protection to certain "core content of the fundamental rights" – although these have not been precisely defined in its judicature so far – of the Liechtenstein state system, granting higher rank to such content than even EEA law in the ranking of legal rules. Accordingly, the State Court stated in StGH 2013/196, cons. 2.5.1, that it will review the application of EEA law by the EFTA Surveillance Authority or the EFTA Court only if there is the suspicion that there has been a violation of the constitutional principles or a particularly glaring violation of the fundamental laws laid down in the Constitution or the European Convention of Human Rights.

2. *How are the constitutional principles related to each other? Is there any hierarchy within those principles? What approach has the constitutional court taken in terms of determining a hierarchy within the constitution? Is it possible to conclude from the jurisprudence of the constitutional court that it has given principal status to some constitutional principles over the rest of the basic law?*

The answer to this question is more or less evident from the answer to the preceding question.

As has been stated above, there is no ranking within constitutional law with the exception of the fundamental principles and the core content of the fundamental rights of the Constitution, which rank higher than EEA law.

⁵⁰ Cf. Thürer, Liechtenstein und die Völkerrechtsordnung, Archiv des Völkerrechts 1998/2, p. 109.

⁵¹ Cf. StGH 2004/45; StGH 2005/89.

3. *How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law? How was the constitution established originally and does it explicitly provide for unamendable (eternal) provisions? Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law? Have the constitutional principles ever been subjected to change in your jurisdiction? If yes, what were the reasons behind it?*

The Constitution does not contain any unamendable provisions. Amendments to the Constitution are subject to the mentioned Art. 112 LV, i.e. they require either unanimity in the Diet or a three-quarters majority in two subsequent meetings. If the people take up the option of having a referendum (Art. 66 LV), a referendum is required in addition to all this.

It is also possible for the people to submit a constitutional initiative. If this is accepted in a referendum, the Constitution may also be amended in this way. In all cases, however, the consent of the Prince is required pursuant to Art. 9 LV. A special procedure is provided for in Art. 113 LV for the abolition of the monarchy.

The current Constitution of Liechtenstein has had legal continuity since the *Konstitutionelle Verfassung* of 1862. A new Constitution was adopted in 1921, but that revision was carried out in accordance with the provision of the *Konstitutionelle Verfassung* concerning its own amendment.

As to the constitutional principles, there have been no far-reaching changes to the practice of the State Court. In particular, once taken, the paths chosen in jurisprudence have been continued.

4. *Should constitutional amendment procedure be subjected to judicial scrutiny or should it be left entirely up to the political actors? What is the prevailing legal opinion in this regard among academic scholars and other societal groups in your jurisdiction?*

The State Court emphasises in its practice the importance of granting leeway to the legislator for the latter's legal policy. It also emphasises the democratic character of the Constitution. Making amendments to the Constitution more difficult is a matter of legal policy, which the State Court will not meddle in.

However, the question whether a concrete amendment to the Constitution has come about in accordance with the constitutional requirements is subject to review by the State Court.

5. *Does the constitution in your jurisdiction provide for constitutional overview of the constitutional amendment? If yes, what legal subjects may apply to the constitutional court and challenge the constitutionality of the amendment to the basic law? What is the legally-prescribed procedure of adjudication in this regard?*

No special procedure is provided for this case. It is conceivable that the State Court will have to assess in the course of a typical request for the review of rules whether an amendment to the Constitution has come about in accordance with the Constitution, and the same may happen in the framework of individual complaint proceedings. However, this type of review of rules is neither procedurally nor substantively different from other reviews of rules.

6. *Is the constitutional court authorised to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds? In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court's reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? What is legal effect of a decision of the constitutional court finding the constitutional amendment in conflict with the constitution? Please, provide examples from the jurisprudence of the constitutional court.*

There is no example in the practice of the State Court so far where the State Court ruled an amendment to the Constitution to have come about unconstitutionally. A review in terms of the content of an amendment to the Constitution is impossible, since there is no ranking within constitutional law in Liechtenstein.

7. *Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of the constitutional court's power to check amendments to the basic law? Do academic scholars or other societal groups advocate for such development? How is the judicial review observed in this regard? Would the expansion or recognition of constitutional court's authority encourage the realisation of constitutional ends or threaten its viability? Please, elaborate on existing discussion in your jurisdiction.*

No such tendencies can be found in the State Court's practice so far. As has been stated, it is uncontested that the State Court has the power within the review of rules to check amendments to the Constitution as to whether they have come about constitutionally. There have been no demands to extend the controlling powers of the State Court to include the content of amendments to the Constitution.