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Microstate and monarchy in the face of the challenges of the modern world. The political system of Liechtenstein and its specificity (an outline of the problem)¹

Abstract: The paper is an attempt to analyse the functioning of the political system of monarchy and microstate in the conditions of modern processes of integration and globalisation with which we are dealing in Europe. The author attempts to analyse the functioning of the state based on an interview with the main political actor of the Duchy – HSH Alois, who since 2004, under Article 13 bis of the Constitution of the Principality, fulfils the duties of head of state. The author is also tries to draw attention to the specific features of the political system of Liechtenstein.

Key words: Liechtenstein, microstate, monarchy, political system

Liechtenstein is a monarchy which is certainly unique on the European scale. The specificity of the structure of the political system of this country manifests itself in the strong political position of the head of state. This State remains, next to Monaco and the Vatican City State, as the last monarchy on the European continent, in which the monarch plays an important role in ongoing political life and does not play only a symbolic function, as with the monarchies of Scandinavia or, as is the case in recent decades, also in the Benelux monarchies (Marxer, 2013, p. 65; Foulkes, 2012). In view of the process of democratisation of the modern monarchy after the constitutional referendum in 2003, the citizens of Liechtenstein consolidated their specific system based on relatively strong princely power and agreed to create unique, specific constitutional institutions such as, among others, the possibility of the monarch receiving a vote of no confidence from the citizens. The paper is an attempt to answer the question of how a modern state-monarchy with a specific structure (both in its territorial and organisational dimensions, i.e. in the structure of the political system) can fulfil the requirements of a democratic state. The analysis was based on an interview with Prince Alois von und zu Liechtenstein (its text appears in the present issue of this journal),² opinions expressed by the experts of the Venice Commission³ and academic literature.⁴

¹ The paper is the result of wider research conducted during a research internship in Liechtenstein Institute in Bendern in 2014. Due to editorial limitations, this paper is only an outline of the problem.

² The interview was conducted on 19 December, 2014 in Vaduz (Liechtenstein).

³ The Venice Commission (official name – European Commission for Democracy through Law) is an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law.

⁴ The importance of such authors as Wilfried Marxer (Liechtenstein-Institut), Wouter Veenendaal (Royal Netherlands Institute of Southeast Asian and Caribbean Studies in Leiden) and Sebastian Wolf (Liechtenstein-Institut) should be emphasised.

Succession to the throne and the Princely House Law of Liechtenstein of 26 October 1993

*(Hausgesetz des fürstlichen Hauses Liechtenstein vom 26. Oktober 1993)*⁵

In the last few years there has been a noticeable tendency to eliminate the legal barriers preventing or hindering⁶ the possibility of a woman ascending the throne. The current law on succession to the throne (dynastic law) in Liechtenstein was adopted in 1993, due to the fact that – as stated in the introduction – “in parts the old provisions no longer met modern requirements”. In view of the fact that Liechtenstein now remains the last country in Europe which in its law of succession excludes women,⁷ one should seriously reflect on whether the quotation above is still true. It should be noted that the Venice Commission did not address the issue of whether the law of succession complied with the Constitution, but criticised the fact that the rules of succession were excluded from the Constitution.⁸ The inability to change the law of succession, even using the procedure for amending the Constitution, distinguishes the Liechtenstein monarchy from other European democracies. The possibility of changing the dynastic law is highly unlikely in the near future. This change requires not only the will of the prince, but also a two-thirds majority of all members of the Princely House. Currently, the Princely House is not expected in the near future to propose any changes in the matter of dynastic law, despite the evolution of the dynastic laws of all European hereditary monarchies (excluding Monaco).⁹

Co-regency mechanism (art. 13 bis of the Constitution)

Both the Constitution and the Princely House Law (*Hausgesetz*) make it possible for an adult heir to the throne to perform the duties of head of state for life. In accordance with Article 13 bis, “The Prince Regnant may entrust the next Heir Apparent of his House [...] with the exercise of the sovereign powers held by him as his representative should he be temporarily prevented or in preparation for the Succession”. The Prince has the right at any time to revoke the power of attorney he gave his successor.¹⁰ The mechanism of Arti-

⁵ For more on succession law in Liechtenstein see: W. Marxer (2003), *Das Hausgesetz des Fürsthauses von Liechtenstein und dessen Verhältnis zur staatlichen Ordnung*, Bendem (Beiträge Liechtenstein-Institut, 17), http://www.liechtenstein-institut.li/Portals/0/contortionistUniverses/408/rsc/Publikation_downloadLink/LIB_017.pdf; U. C. von und zu Liechtenstein (2008), *Das Hausgesetz der fürstlichen Familie Liechtenstein*, Graz, <http://unipub.uni-graz.at/obvu-grh/download/pdf/206457?originalFilename=true>.

⁶ Denmark did so in 2009, Luxembourg in 2011, the United Kingdom in 2015.

⁷ I omit in this case, the Vatican City State and Andorra, which as elective monarchies (in the case of Andorra – the *quasi*-elective) do not provide hereditary succession to the throne.

⁸ The idea of placing the Princely House Law beyond the Constitution of the Principality was called “astonishing” by the Venice Commission (Opinion no. 227, sec. 33).

⁹ In the case of Monaco the system is based on male primogeniture (Elder sons of the monarch take precedence over younger sons, but all sons take precedence over all daughters).

¹⁰ This position is expressed by Prince Alois: “If you look at Article 13 bis the Reigning Prince can entrust the Hereditary Prince with the rights and obligations as head of state. In that sense, he remains

cle 13 bis can be regarded as an intermediate form which allows the monarch to prepare his son to perform the office of head of state in the future, and at the same time allows him not to resign from the privileges of head of state. In Liechtenstein, the mechanism of transferring power in accordance with Article 13 bis has been already used twice: Franz Joseph II handed over power to his son in 1984, and Hans-Adam II, who, as head of state since 1989, handed over power in 2004 to his son, Alois.¹¹

It should be noted that both the above-mentioned legal acts provide a mechanism for the abdication of the head of state. In the last few years we have seen a trend of transferring power by monarchs to successors to the throne.¹² In Liechtenstein, the mechanism of co-regency allows the heir to be prepared to take up the duties of the head of state at the moment in which the monarch deems it appropriate. Prince Alois indicates that this institution allows him (as a representative of the head of state) to use the assistance of the head of state and to maintain control over the affairs of state: "It is generally very helpful for a head of state to be able to talk through certain political questions with other people, and particularly with people who don't have a vested interest, and that's a problem if you talk to other politicians and representatives of interest groups and so on. So, to be able to talk anything through with someone who has all this experience, who has a neutral position, was helpful."

Institutions of direct democracy

Liechtenstein has both very specific institutions of direct democracy and a very high level of usage of them. The Constitution of the Principality provides a very wide range of instruments of direct democracy (from the possibility of convening and dissolving the parliament, by approving amendments to the Constitution, and ending with participation in the legislative process – see Table 1). Compared to Switzerland, there is an even wider range of direct democratic instruments, including recall referendum, for example. But the instruments are not as frequently used as in neighbouring Switzerland (Marxer, 2007, *Introduction*). Depending on the adopted methodology, the Constitution of the Principality anticipates from a couple to several different institutions of direct democracy. In addition to the aforementioned ones, the Constitution also provides for fairly specific legal solutions such as a referendum on changes to the boundaries between municipalities, on creating new and on merging existing municipalities; a referendum (in some countries synonymous with plebiscite) on leaving the state union; a referendum on issuing a motion

formally the Reigning Prince, even though the role of the acting head of state is taken over by the Hereditary Prince, but theoretically it is a kind of a deputy role the Hereditary Prince takes on, and that could be reversed theoretically. In other words, it is obviously normal that the deputy keeps the reigning Prince informed about the most important issues. This comes with the role he performs for the one he is representing."

¹¹ At this point it is worth mentioning a similar solution in Luxembourg, where the prince can indicate a blood prince (The Grand Duke may have Himself represented by a Prince of the blood, who shall bear the title of Lieutenant of the Grand Duke and who shall reside in the Grand Duchy). Constitution du Grand-Duché de Luxembourg (1868), Article 42.

¹² This situation in recent years occurred in Belgium (2013), Spain (2014) and in the Netherlands (2013).

of censure against the Reigning prince; a referendum on the election of a judge; a procedure related to approval of the republican form of government.

This broad catalogue of instruments of direct democracy should be assessed positively. This assessment is based mainly on the assumption that the sovereign body (understood here as the total population of the country)¹³ should itself decide on the direction of change in the country. However, if we take into account the fact that sovereign power in the Principality lies in the hands of both the Prince and the citizens, and that the Prince has the ability to block most of the initiatives coming from the citizens,¹⁴ we can see that the political system of Liechtenstein is a network of complex relationships in which the main role in the political system is played by the Princely House. The degree of use of instruments of direct democracy in the Principality can undoubtedly be assessed as high, if we take into account the situation in other European countries.

After the instruments of direct democracy were granted to citizens under the current Constitution in 1921, on average, they have gone to the polls to decide about state matters other than parliamentary or local elections about once a year. This high level of use of these instruments involves at least three reasons: the geographical and political proximity between Liechtenstein and Switzerland (which today is considered the home of the referendum); the ease of initiating the instrument (collecting more than 1,000 signatures of citizens does not constitute a large obstacle), as well as historical reasons – namely, the lack of any form of direct democracy before 1921.

Table 1

Direct-democratic instruments in Switzerland (CH) and Liechtenstein (FL)

Initiative		Referendum			
		Obligatory		Facultative	
1	2	3	4	5	6
Constitutional initiative	CH/ FL	Total or partial revision of the constitution; to decide whether to undertake a revision of the constitution (when MPs are unable to agree)	CH	Constitutional referendum	FL
Legislative initiative	(CH)/ FL	Federal laws declared to be urgent, which have no basis in the constitution and whose term of applicability exceeds one year	CH	Legislative referendum	CH/ FL

¹³ Liechtenstein is a state in which sovereign power is rooted in two entities: the prince and the citizens (“the power of the State is inherent in and issues from the Prince Regnant and the People”).

¹⁴ Exceptions to this rule are:

- 1) The consultative referendum on the adoption of individual rules of the proposed law;
- 2) Proposal for a referendum on an international agreement;
- 3) A referendum on election of the judge;
- 4) Motivated request to convene the Landtag (parliament);
- 5) A referendum on the dissolution of the Landtag;
- 6) A request for a referendum and other procedures on abolishing the monarchy.

1	2	3	4	5	6
Initiative to convene Parliament	FL	Obligatory referendum on international treaties	CH	Facultative referendum on international treaties	CH/FL
Initiative to dissolve Parliament	FL	Republican constitution (definitive abolition of the monarchy)	FL	Federal laws declared to be urgent and whose term of applicability exceeds one year	CH
Motion of no confidence in the Prince	FL	Election of judges (where the constitutional organs are in disagreement)	FL	Finance referendum	FL
Abolition of the monarchy (launch of the process)	FL			Authorities' referendum (parliamentary proposal)	FL
Nomination of judges (where the constitutional organs are in disagreement)	FL			Consultative popular vote (parliamentary proposal)	FL

Source: W. Marxer, Z. T. Pällinger, *Stabilising or destabilising? Direct-democratic instruments in different political systems – Liechtenstein and Switzerland compared*, Paper to be presented at the ECPR Joint Sessions Helsinki, 7–12 May 2007 Workshop no. 18, Referendums and Initiatives: Supplementing or Undermining Representative Democracy?, <http://ecpr.eu/Filestore/PaperProposal/e5ea6fff-c6c6-482b-97f1-cf975aeba298.pdf>, p. 4.

Mechanisms of Article 13 ter (motion of no confidence in the Prince) and of Article 113 (abolishing the Monarchy)

Since 2003, the Constitution of the Principality has had provisions which it is difficult to find in other European countries where the monarch is the head of state. The procedure for the appointment of judges is seen as controversial, in the opinion of the Venice Commission, due to the highly important role of the monarch. The prince is involved in the selection of judges (which is criticised by the Commission because in their opinion the head of state should play only a ceremonial role in this procedure). It is worth mentioning that in the case of a disagreement between the representation of parliament and the representation of the prince, the final decision is handed over to the citizens, who may choose specific candidates for judges.¹⁵ This also raises the doubts of the Venice Commission (Opinion no. 227, sec. 29–30).

Currently, Liechtenstein citizens have the opportunity to table a reasoned motion of no confidence in the Prince. Such an institution is found mainly in parliamentary systems where parliament can express censure of the government (or its member) which entails the need to resign (Müller, 2011, pp. 143–144). In the case of Liechtenstein, censure is given in a referendum, which is organised if at least 1,500 citizens' signatures are collected. The consequences of granting a motion of censure are determined by Princely House Law *Hausgesetz*.¹⁶

¹⁵ The prince in this case has no right of veto.

¹⁶ The *Hausgesetz* provides a range of possible consequences (m. al. removal from the throne, censure). They are drawn up by the Family Council (*Hausgesetz*, Art. 16).

The Constitution of the Principality also provides a mechanism of de facto total revision of the Constitution. The procedure described in Article 113 outlines the mechanism for removing the monarchy (*eine Initiative auf Abschaffung der Monarchie*). The procedure is complicated, which, because of its possible effects, should not be surprising. According to the Constitution 1,500 citizens may apply for the abolition of the monarchy. If the referendum receives a majority vote, parliament is obliged to prepare a republican constitution, which again is subjected to the judgment of the citizens. An absolute majority is required.

It is worth mentioning that the monarch is granted the right to put his own draft of the constitution to a vote. The procedure is relatively detailed in the Constitution, and time limits are introduced (e.g. the referendum on the republican constitution must be organised after one year at the earliest and two years at the latest).

Both solutions (motion of no confidence and procedure for abolishing the monarchy) were commented on negatively by the Venice Commission. Although the Commission explicitly notes that only the popular initiative on the overthrow of the monarchy is intended as a counterweight to the lack of balance in the distribution of powers (Opinion no. 227, sec. 35), it seems that this interpretation can be extended to both institutions. The motion of no confidence mechanism as an institution should be subject to criticism, in the opinion of the Venice Commission, due to several aspects:

- 1) this procedure tries to provide democratic legitimacy for the Prince – not referring directly to that plea, it is worth quoting the Prince's words, who notes that "one could also say that with this constitutional amendment [of 2003 – M.Ł.] the legitimisation of the Reigning Prince moved from divine legitimisation to a democratic legitimisation";
- 2) the initiative cannot be taken anonymously (in opposition to elections where the decision is taken by secret ballot, so the voter's choice is anonymous) and is therefore not equivalent to democratic free elections;
- 3) the citizens' decision is not final, because after the referendum, the final decision is taken by the Family Council;
- 4) European constitutional monarchies should be linked with stability and the sacrosanct position of the monarch due to his inability to act alone (Opinion no. 227, sec. 34).

Turning to the subject of the constitutional amendment of 2003, it is worth mentioning that the Princely House and the Venice Commission are in conflict as to ascertaining the nature of this change. According to the Venice Commission, all three of the above mentioned solutions are incompatible with European standards (*acquis européen*). However, the greatest conflict is linked more to the actual evolution of constitutional law of the Principality. According to the Venice Commission, European monarchies are required to retain or limit the current powers of head of state, but never strengthen them. In the opinion of the Venice Commission, we were dealing with the latter in Liechtenstein in 2003. The Princely House remains in opposition to this position. Prince Alois states: "It is a common misunderstanding that with the reform of 2003 the Reigning Prince gained political power. Actually, this reform reduced the political power of the Reigning Prince and if you look back into history, the power of the Reigning Prince has been diminishing over the longer period, similar to other European monarchies. If you look at the articles of the

Constitution prior to the reform and after 2003, you will actually see that the rights [of] the people were increased and the political power of the Reigning Prince was reduced.”

It seems that in large part the axis of the dispute is linked with the assessment of the instruments of direct democracy as an effective institution leading to enforcing the will of the citizens. Thus, if we find that the 2003 amendment granted municipalities the right to separate from the state, then we believe that citizens' rights have been extended, but if we look at the possibility of the monarch blocking most citizen initiatives (including the princely veto in relation to changing the law on allowing border changes, which may be blocked by the Princely House, or the citizen-driven initiative for the amendment of the Constitution which may also be blocked by the head of state). This problem, however, requires addressing separately.

Milizparlament/Milizsystem

Milizparlament (Milizsystem) is the form of parliamentary work in which MPs hold their mandate on the basis of a semi-professional parliament, unlike most European countries in which parliamentarians hold office as a full-time job. This form of carrying out the duties of parliament is present in neighbouring Switzerland, and it is linked with the Swiss political culture which forces MPs to remain in constant contact with citizens, as well as with the need to struggle with the problems of everyday life in society.¹⁷ The inconveniences that are associated with such a system include members' of parliament need to rely in their work on parliament's services, or, as is the case of Liechtenstein, on the services of the government's employees. This may ultimately lead to reducing MPs only to those who control the work of the government and accept or reject draft laws prepared by him. The Prince states that the work of the Landtag is increasingly based on constructive criticism of government projects (“There is much less of a tendency to just rubber stamp proposals given by the Government, even if the ministers and parliamentarians are from the same political party”), which should be viewed positively. The Prince, pointing to the high costs of the functioning of a parliament made up of full-time MPs, but seeing the benefits of such a system, indicates the arguments against change, in particular the necessity to incur the related costs entailed in full-time employment. The problem, however, remains a matter of legislation related to the membership of the Principality in the EEA. The Prince, noting that, states: “There is a challenge for the parliamentarians to work on complicated laws, and due to the flood of EU laws coming from EEA membership, to have enough resources to look into detail into all the laws. They don't have the same resources, especially the same access to civil servant resources, as the Government has. However, this is generally a problem for most parliaments in the world, with some exceptions like the US Congress, which has a real, big machinery to look at everything in detail, and therefore has more or less the same facility as the Government.”

¹⁷ As opposed to the majority of parliaments, the Swiss Federal Assembly is not made up of professional parliamentarians. The members of both chambers exercise their mandates as a supplementary activity, in addition to their chosen profession (Vatter, 2015, p. 10).

Functions of the state in the face of current integration processes

In performing the functions envisaged for a state body, a government must ensure the provision of relevant services. The need to maintain appropriate fiscal policy, providing funding for the services demanded by citizens must be borne in mind. In geopolitical terms, for a microstate which has good relations with neighbouring countries it appears desirable to transfer some state services to its neighbours. Such a policy can be pursued only in the context of good relations with those neighbours, as potential conflict could lead to attempts to impose specific conduct onto a micro state which only served the interests of the larger neighbour.

Prince Alois believes that in the face of the challenges of the modern, globalised world, creating a network of sovereign institutions required to provide the full range of services desired by society cannot be reconciled with the need to maintain a balanced state budget. Prince Alois also draws more attention to the problem of sovereignty, picked up so often in debates relating to the accession to organisations such as the European Union: “So the concept of sovereignty doesn’t necessary require that you offer all of that yourself. So let me look at your country. You give up a lot of sovereignty to the EU level, but what is important is that whatever you outsource to your neighbours, what you give up, what you decide to regulate on international level, that you keep the power to change that. If you are not happy with the service you get from one of your neighbours, you’re not happy with the international setup, in our case the EEA, you can reverse it and go for new arrangements. This has been always our philosophy and in this sense we are sovereign. Nowadays, if you look at European countries, sovereignty is not so much what you provide on your own, but it’s whether you are taken seriously as a member of the international community, act responsibly, if you are an active member of the international community.”

Using the services provided by one of the neighbours was (and still is) a popular practice for many years, in particular with regard to consular services. As concerns European microstates, many services are provided by their larger neighbours (in the case of Liechtenstein – consular affairs are conducted by the Swiss bodies). The problem of running a sovereign foreign policy is difficult if the state does not have the relevant bodies. For microstates, the problem is linked with maintaining the diplomatic missions. The costs incurred by the state and the need to maintain a mission lead to a choice among states and organisations from among those with whom business is a priority of the individual microstate. Thus, in the last few years, the government of Liechtenstein has been facing the difficult decision to limit personnel and/or the number of missions abroad.¹⁸

¹⁸ The Prince sees this problem: “Luckily, we have very good relations with many countries. However, for very small countries it is a big challenge to keep very close relationships with many countries because we simply don’t have enough resources for that. So we always have to prioritise very good relations with our neighbours and with our trading partners. You can argue how many missions, embassies we need. In my opinion, we are generally on a good level if you look at the amount of costs, and if you cut one or two diplomatic missions, you don’t really save a great deal of costs in the overall context of the state budget. However, there is something you can observe in other countries – to explain to the people the need for foreign politics is always difficult – and therefore this argument arises from time to time because the citizens don’t see the benefits of foreign politics directly.”

Summary

At the start of the 20th century, San Marino, Switzerland and France were the only European countries to have a republican form of government. The number of monarchies greatly increased after World War I, but since World War II, the republican form of government has become dominant in Europe. Currently in Europe, there are only 12 monarchies. Four of these are microstates (Andorra, Liechtenstein, Monaco and Vatican City). Excluding the Vatican, Liechtenstein and Monaco, the constitutions of European monarchies limit the role of the head of state to representative functions. It seems that with the evolution initiated in large part by the Scandinavian monarchies, where the head of state delegates powers to bodies accountable to the citizens, in the long term, we will have with other democratic European monarchies. The amendment of 2003 has stopped this evolution in one of them.

Another problem is the outcome of the further evolution of monarchical political systems in Europe. According to Prince Alois, the model of the monarchy in the form of Liechtenstein has much to offer other European countries, mainly due to the combination of two elements: parliamentary democracy with strong monarchic elements, and a strong direct democracy, which, according to the prince, creates stability: "This brings very high political and economic stability, a long term orientation of politics, high continuity and identity all thanks to the elements of monarchy. And the politicians act very closely to the people, this is very much thanks to the direct democracy element."

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Mikropaństwo i monarchia wobec wyzwań współczesnego świata. System polityczny Liechtensteinu i jego specyfika (zarys problemu)

Streszczenie

Przedmiotem artykułu jest próba analizy funkcjonowania systemu politycznego mikropaństwa i monarchii w warunkach współczesnych procesów integracyjnych i globalizacyjnych, z którymi mamy do czynienia w Europie. Autor podejmuje próbę zanalizowania funkcjonowania państwa, opierając się na wywiadzie z głównym aktorem politycznym Księstwa – księciem Alojzym, który od 2004 roku, na mocy art. 13bis Konstytucji Księstwa, wypełnia obowiązki głowy państwa. Autor stara się też zwrócić uwagę na specyficzne cechy systemu politycznego tego państwa.

Słowa kluczowe: Liechtenstein, mikropaństwo, minipaństwo, monarchia, system polityczny