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Popular Sovereignty vs. Rule of Law

PRINCE AND CITIZENS: SOVEREIGNTY, DEMOCRACY AND THE RULE OF LAW IN LIECHTENSTEIN'S MIXED CONSTITUTION

Zoltán Tibor Pállinger
Associate Professor, Andrássy University Budapest

1. Introduction

Sovereignty is a concept that transcends the customary borders between academic disciplines: „Sovereignty is often seen as a liminal concept. It is thought to inhabit the frontier territories between law, ethics and political science […]."[1] In spite of the importance of this concept for international law and political science, a generally accepted definition of the term is still missing. Thus, sovereignty can be described as an „essentially contested concept". According to the social philosopher Walter B. Gallie: „A concept is essentially contested if it has no single definition, range of reference, and criteria of application upon which all competent speakers can agree."[2] Not surprisingly, Detlev Christian Dicke counts 15 different connotations of the term in the field of international law alone.[3] This conceptual confusion contributes to the fact that in the current literature contradictory diagnoses are made regarding the state of sovereignty: The spectrum extends from positions, which proclaim the erosion or even the end of sovereignty to such ones that speak of the rebirth of strengthening of sovereignty. Whereas the diminishing steering capacity of the states is pointed out on the one hand, on the other hand the fact is highlighted that in the course of history increasing areas of the society were subdued to the regulatory authority of the state.

[1] Hent Kalmo: A matter of fact? The many faces of sovereignty. In: Hent Kalmo – Quentin Skinner (eds.): *Sovereignty in Fragments. The Past, Present and Future of a Contested Concept*. Cambridge, Cambridge University Press, 2010. 114–131.

[2] Walter B. Gallie: Essentially Contested Concepts. *Proceedings of the Aristotelian Society*, vol. 56. (1956), 167–198.

[3] Detlev Christian Dicke: D*ie Intervention mit wirtschaftlichen Mitteln im Völkerrecht; zugleich ein Beitrag zu den Fragen der wirtschaftlichen Souveränität*. Baden-Baden, Nomos, 1978. 56.

From a historical perspective sovereignty performed five functions: 1) During the transition from feudalism to the territorial state, this concept served on the one hand for fighting off rivalling external claims from Emperor and Pope and on the other hand for the internal centralisation of state power against nobility, the estates and the Free Cities. 2) The debate in modern territorial states revolved around the question, whom the legitimate sovereignty belonged to. During the 20th century popular sovereignty asserted itself against monarchic and aristocratic alternatives. 3) In the classical era of international law sovereignty served as guiding principle in the establishment and the management of the international order. 4) In modern international relations, especially in the context of decolonialisation, sovereignty became a protective clause of the weaker states against the stronger ones. 5) Nowadays tendencies may be discerned, which point at the reinforcement of the ideal of the community on the global and also the local level, ultimately leading to the development of an international law of responsibility.[4]

It can thus be concluded that the concept of sovereignty was subject to continuous change throughout history. While the – somewhat diminished importance – of sovereignty in international law theory is not disputed in principle, in political science the usefulness of the concept is increasingly questioned. In the light of the absolutisation of the aspect of territorial stateness sovereignty comes into conflict with the world-state postulates and the modern forms of national and international control (governance). Due to the changing role of the state – away from hierarchical to more cooperative forms of governance – sovereignty is also increasingly questioned domestically.[5]

Notwithstanding how interesting the development of the concept of sovereignty in the field of international law and of international relations might be, at the centre of interest of this paper lays the internal or domestic aspect of sovereignty. Throughout history this dimension of sovereignty has also been subject to steady change: Corresponding to the development of the context of the state, sovereignty has initially served to allocate the ultimate authority in the dominion to the prince, thus becoming constitutive for the development of the modern state. During the 19th century the term „state sovereignty" helped to strike a balance between the contending claims to sovereignity of the prince and the people.[6] The process of „fundamental

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4 Zoltán Tibor Pállinger: Von Westfalen zum Global Village: Wandlungen des Souveränitätskonzepts. *Jahrbuch des Historischen Vereins für das Fürstentum Liechtenstein*, vol. 105. (2006), 52–75.

5 Current conflicts between Eastern and Western members of the EU and the global war on terrorism show that not only the USA and other great powers, but also smaler states are cautios to maintain their national sovereignty. This may weaken the concept of a global community, but not the importance of sovereignty. For representatives of the realist school of international relations the importance of sovereignty is anyway beyond doubt.

6 Cf. Reinhart Koselleck: Staat und Souveränität. In: Otto Brunner – Werner Conze – Reinhart Koselleck (eds.): *Geschichtliche Grundbegriffe. Historisches Lexikon zur politischen Sprache in Deutschland.* Vol. 6. Stuttgart, Klett-Cotta, 1997. 1–154.

democratisation"[7] which set in during the 19th century on an general basis, led to displacing the other forms of sovereignty by the idea of popular sovereignty, thereby establishing – at least in Europe – democracy as the only normatively acceptable form of legitimising public authority.

This perspective, however, neglects the fact that in Europe independent, differing patterns of state legitimacy still exist. Besides the Prinicpality of Monaco, Vatican City, and – with some limitations – the Principality of Andorra, also the Principality of Liechtenstein in particular are representing special cases regarding domestic sovereignity.

It is the aim of this essay to give an overview, how in the Prinicipality of Liechtenstein, which's constitution comprises both a strong monarchic and democratic element, the question of domestic sovereignity is regulated. To this end the concept of sovereignity with a particular emphasis of the domestic dimension is developed and the corresponding political questions will be clarified. Subsequently the Liechtenstein solution will be presented with a special focus on the role of the monarch. Finally, the conclusions will be drawn.

2. The Conception of Sovereignity

Although different, mutually independent dominions have existed in antiquity, the term state sovereignity came into use only at the end of the Middle Ages in the context of the struggle between the Holy Roman Empire and the Pope for secular supremacy. The conflict was rooted in the transistion from feudalism to the territorial state. Since the beginning of the 13th century the claim was put forward in France that the king of France had a congenial position in his own realm as the emperor („rex Franciae est imperator in suo regno").[8] Towards the end of the 13th century this claim was taken up in England, and in the 14th century also in Germany. A similar claim was made in the Italian city republics, which conceived themselves as „civitates qui utuntur jurisdictione imperiali".[9]

However, a proper theory of sovereignity can only be found at the end of the 16th century in Jean Bodin's „Les Six Livres de la République", in which he defines the term „souveraineté" as „puissance absolue et perpétuelle d'une République"[10] and making it the basis of a systemactic doctrine of the state. This supreme power is absolute and indivisible. The sovereign is able to legislate, without needing approval of anyone else. Doing so, he is only bound by the „natural law" and the „law of

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[7] Jürgen GEBHARDT: Das Plebiszit in der repräsentativen Demokratie. In: Hans Herbert VON ARNIM (ed.): *Direkte Demokratie. Beiträge auf dem 3. Speyerer Demokratieforum vom 27. bis 29. Oktober 1999 an der Deutschen Hochschule Speyer*. Berlin, Duncker & Humblot, 13–26.

[8] Quoted in: Herfried MÜNKLER: Angriff als beste Verteidigung? Sicherheitsdoktrinen in der asymmetrischen Konstellation. *Internationale Politik und Gesellschaft*, no. 3. (2004), 22–37.

[9] Quoted in: Alfred VERDROSS – Bruno SIMMA: *Universelles Völkerrecht. Theorie und Praxis.* Berlin, Duncker & Humblot, 1984. 25.

[10] Jean BODIN: *Les six livres de la République (=Corpus des oeuvres de philosophie en langue française).* Paris, A. Fayard, 1986. I 8.

nations", but not by any other – human – laws. Therefore, those communities and persons can be considered as "sovereign", which are not subjected to any higher authority (potestas). Thereby, Bodin transcends the medieval legal opinion that that god and not the state ist the basis of law. Law derives its validity not from tradition anymore, but from state sovereignity. As a result it becomes possible for the state to legislate new law, which replaces the old law. Thereby, Bodin is laying the basis for modern positivist legal and state theories.[11] Bodins view that the state is an indivisible and independent unity, which can autonomously determine who is domestically authorised to legislate, implies a strong territorial relation of sovereignity: „Only territorially confined human communities, which are externally and internally sovereign, are states in the proper sense."[12] Thereby, the first aspect of sovereignity is invoked, which deals with the question whether the state is sovereign towards the inside and the outside. For Bodin however, the second aspect of sovereignity, the question to which authority within the state sovereignity belongs, is central. The paramount for him is the sovereignity of the prince over his subjects.[13]

In the middle of the 18th century Emer de Vattel carried the analysis of state sovereignity further. He identified three constitutive attributes of the concept: independence from other states, self-government, and a third criterion, which he derived from the other two, immediate international subjectiveness.[14] This view became the classical doctrine of international law. Thus, the Permanent Court of International Justice confirmed in its arbitration ruling in the Island of Palmas Case from 1929 the validity of this concept: „Sovereignity in the relation between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a state."[15]

In the perception of Bodin the scope of sovereignity was domestically unlimited. The prince as sovereign was only bound by – the non-enforcable – natural law and the international law. Therefore, he righlty rejects the possibility of the divisibility of sovereignity:[16]

> „Or tout ainsi que ce grand Dieu souverain ne peut faire un Dieu pareil à lui, attendue quil est infini, et qu'il ne se faire qu'ait deux choses infinie, par démonstration nécessaire, aussi pouvons nous dire que le prince que nous avon posé comme image de Dieu, ne peut faire un sujet égal à lui, que sa puissance ne soit anéantie."[17]

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[11] Thomas FLEINER-GERSTER: *Allgemeine Staatslehre*. Berlin, Springer, 1995.

[12] FLEINER–GERSTER op. cit. 155. (author's own translation).

[13] Ibid. 153.

[14] Emer DE VATTEL: *Le Droit des Gens ou Principes de la Loi Naturelle, appliqués à la Conduite et aux Affaires des Nations et des Souverains*. Washington, Classics of International Law, 1916. XVII.

[15] See *Palmas Case* (UNRIAA 2 829), Jörg Paul MÜLLER – Luzius Wildhaber: *Praxis des Völkerrechts*. Bern, Stämpfli, 1982. 144.

[16] FLEINER–GERSTER op. cit. 153.

[17] BODIN op. cit. I 10.

Consequentially, the Treaty of Westphalia from 1648, the first international treaty to confirm the concept of sovereignity explicitely,[18] attributes to the sovereign princes the quality of being independent and equal and thus having no supreme authority above them. Thus the principle of non-interference in domestic affairs can be derived from the axiom of sovereign equality: „The *grundnorm* of such a political arrangement (sovereign statehood) is the basic prohibition against foreign intervention which simultaneously imposes duty of forbearance and confers a right of independence on all statesmen."[19] However, confronted with reality, the postulate of the indivisibility of sovereignty couldn't be upholded unrestrictedly. Especially regarding the Holy Roman Empire the question, to whom sovereignity belonged, became acute.[20] Under the conditions of federalism the answer to that question was not unambiguous. The development of the doctrine of the separation of powers and the liberal basic rights called the indivisibility and unlimitedness of sovereignty into question. By distinguishing between the sovereignty of the state and the sovereignty of its organs the problem could be solved on a superficial level: Sovereignty was not seen resting with particular state organs (organ sovereignity) anymore but belonged to the state as a whole (state sovereignity). Besides the question, who was the bearer of sovereignty, also the question of its scope was discussed. During the course of history, broadly speaking, the conception of absolute sovereignty was gradually replaced by the conception of relative sovereignty. The „armour of sovereignty"[21] broken up, and the admissible degree of internal and external commitments of state power, which were considered to be compatible with sovereignty, have significantly increased.

During the 19th century the discussion in state theory about the source (or the legitimisation) of sovereignty culminated.[22] At the core of this conflict lay the question to whom (to the monarch or to the people) the ultimate authority in the state (sovereignty) belongs. At the beginning of the century the absolutist conception that sovereignty belonged to the prince by the grace of god. In the course of the Enlightment traditional legitimation of the monarch gave way to rational legitimation, therefore royal sovereignty was integrated gradually in a constitutional framework. This development which is called „constitutionalism", can be seen as a transitional stage between absolultism and parliamentary monarchy. Contrary to absolutism, in constitutionalism the power of the monarch is limited by a constitution, but unlike in a parliamentary monarchy, in which parliamentary majority expresses its confidence

[18] Otto Kimminich: *Einführung in das Völkerrecht*. München, De Gruyter, 1990. 71.

[19] Robert H. Jackson: *Quasi-States: Sovereignty, International Relations and the Third World*. Cambridge, Cambridge University Press, 1990. 6.

[20] Hans Boldt: Souveränität. In: Otto Brunner – Werner Conze – Reinhart Koselleck (eds.): *Geschichtliche Grundbegriffe. Historisches Lexikon zur politischen Sprache in Deutschland.* Band 6. Stuttgart, Klett-Cotta, 1997. 1–154.

[21] Artur Müller-Wewel: *Souveränitätskonzepte im geltenden Völkerrecht* [Studien und Materialien zum Öffentlichen Recht]. Frankfurt am Main, Peter Lang, 2003. 330 (author's own translation).

[22] Jens Bartelson: Sovereignty. In: Bertrand Badie et al. (eds.): *International Encyclopedia of Political Science*. Vol. 8. Thousand Oaks, SAGE, 2011. 2469–2472.

in the government, which then is appointed by the prince, the monarch alone was the bearer of the executive power. The powers of the parliament were gradually – often in conflicts with the crown – expanded, so that it gained a decisive role in legislation, in the formation, control and continuity of the government as well as in the adoption of the budget. As the powers of parliaments increased, the franchise was also expanded, which gradually led to the realisation of the universal and equal suffrage for men and women. At the end of the processe the crown was not able to act without the – popularly elected – parliament anymore. The replacement of the monarchic principle by popular sovereignty occurred in many of the European states after the Great War. Thereby, either the role of the monarch was reduced to solely representative functions or the monarchy was even replaced by the republic. This development helped to establish democracy during the 20th century as the only possible legitimate form of government – at least in Europe. The emphasis of the main democratic legitimation principle, popular sovereignty, devaluates possible alternatives to democracy like monarchic or aristocratic sovereignty.

After the presentation of different aspects of sovereignty, concludingly a classification, which is based on the international legal theory, is introduced. This classification differentiates the dimensions of sovereignty on the basis of four conceptual pairs: 1) Absolute and relative, 2) positive and negative, 3) domestic and external as well as 4) legal and political.[23]

The first distinction between relative and absolute sovereignty aims at the scope of the principle of sovereignty. While relative conceptions of sovereignty consider some limitations of sovereignity stemming in domestic politics from the existence of different bearers of sovereignty and constitutional limitations of power, resulting in the field of foreign politics from the existence of other equal states, acceptable; whereas limitations of sovereignty are – according to the absolute conception of sovereignty – not possible. Absolute sovereignty, understood as absolute legal freedom, can for logical reasons not exist in a system of sovereign equality and/or separation of powers and limitation of power.

The second conceptual pair of positive and negative sovereignty is used analogously to the distinction of positive and negative freedom. In this sense positive sovereignty means freedom of action (freedom to). In contrast negative sovereignty is understood as autonomy of action (freedom from) in the sense of being free from other actors' influences.[24]

In its third manifestation sovereignty comprises a domestic as well as an external dimension: One can speak of internale sovereignty if a state is the supreme authority for people living on its territory, against which's decisions there is no appeal to a higher authority. External sovereignty on the other hand means that in their mutal

[23] Charles E. Ritterband: *Universeller Menschenrechtsschutz und völkerrechtliches Interventionsverbot.* Bern–Stuttgart, Peter Lang, 1982. 236.

[24] Müller–Wewel op. cit. 178.

realtions states are not subjected to supranational authorities, but only to international law, which ultimately rests on the mutual consensus of the states.[25]

The fourth distincition between legal and political sovereignty refers to „field of manifestation of Sovereignty".[26] In this sense one can speak of legal sovereignty if a state has the status of being fully sovereign, which means that its freedom of action is not legally limited.[27] Compared with this, political sovereignty can be seen as the ability of a state to exercise its functions independently – without external interference.[28]

Based on the principle of sovereign equality it seems to be clear that all states – even „small" ones – posses legal sovereignty, but due to the unequal distribution of power in the international system the political sovereignty may be limited to a greater or lesser extent. The distinction of positive and negative sovereignty is in the context of the present study of rather philosophical than of practical importance. Therfore, we can dispense in the following of the further examination of this concept. That's why the analysis of the concrete form and the scope (absolute – relative) of the internal sovereignty in the Principality of Liechtenstein comes to the fore.

3. The questsion of internal sovereignty in the Principality of Liechtenstein

While the political development in the Principality of Liechtenstein resembled more or less that of the other German monarchies, a unique Liechtenstein system was created with the Constitution of 1921, in which neither the monarchic nor the democratic element prevailed at the expense of the other. The actors were able to find a compromise between those two elements, in which state activity is based on the consensus between the Prince and the people.

Art. 2 of the Constitution of the Principality (Const.) expresses the Liechtenstein conception of the state with a short formulation:

> „The Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis (articles 79 and 80); the power of the State is embodied in the Reigning Prince and the People and shall be exercised by both under the conditions set forth in the provisions of this Constitution."

This statement makes it clear that the constitution of 1921 is neither purely monarchic nor purely democratic, but represents an attempt to reconcile these

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[25] Verdross–Simma op. cit. 29.

[26] Georg Schwarzenberger: The Forms of Sovereignty. *Current Legal Problems*, vol. 10. (1957) 64–95.

[27] Müller–Wewel op. cit. 183.

[28] Verdross–Simma op. cit. 30.

– seemingly – contradictory principles.[29] This kind of the distribution of state power between monarch and people is often referred to as „dualism". This formal principle determines the whole structure of the Liechtenstein constitutional system. An alternative formulation depicts the form of government in the Principality of Liechtensgtein as „elliptic": „With the geometric idea of ellipse the idea of the unity of the state is expressed as well as the constitutionally relevant fact that the two factors prince and people are integrated into this frame."[30] By anchoring the state authority in both the Prince and the people, the Liechtenstein constitutions is granting the monarch an – compared to other European monarchies – unusally strong position. Therefore, it can be considered as a typical example of a high-constitutionalist constitution (hochkonstitutionelle Verfassung).[31] However, from the point of view of democracy theory the deviation from the principle of popular sovereignty can be considered as being problematic, because a not democratically legitimised (elected) state organ (Prince) is put on par with the people. In order to evaluate the implications of this concept of the state, we shall analyse hereafter in greater detail the position of the Prince in the context of the interaction with other political actors.

The position of the Prince in the context of the political system can functionally be deduced from the dualistic structure of the system of government. As one of the two bearers of sovereignty, the Prince possses a extraordinally strong position by international standards.[32] In contrast to most other European monarchs he has not only representative, but also real political competences.

On the other side the popular rights are also fully developed.[33] Besides the right of initiative and referendum, which, however, are under the proviso of the princely veto, the people also have the right of the final decision in the case of a conflict between the parliament and the Prince regarding the appointment of judges. Furthermore, the people has the right to call for a motion of no confidence against the Prince. As a last resort the people can even submit a popular initiative for abolishing the monarchy. Besides the democratic, also the representative element is incorporated in the Liechtenstein constitution: The people elects the 25-member parliament, which – together with the Prince and the government – has a share in legislation. The

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29 Cf. Herbert Wille: Monarchie und Demokratie als Kontroversfragen der Verfassung von 1921. In: Gerard Batliner (ed.): *Die liechtensteinische Verfassung 1921. Elemente der staatlichen Organisation.* Vaduz, Verlag der Liechtensteinischen Akademischen Gesellschaft, 1994. 141–199.

30 Gerard Batliner: Einführung in das liechtensteinische Verfassungsrecht In: Batliner op. cit. 15–104., here 42. (author's own translation).

31 Wilhelm Brauneder: Die Wahl des Staatsoberhaupts in Republiken anhand insbesondere der deutschen und österreichischen Entwicklung. In: Wilhelm Brauneder (ed.): *Wahlen und Wahlrecht. Tagung der Vereinigung für Verfassungsgeschichte in Hofgeismar vom 10.3. – 12.3.1997.* Berlin, Duncker & Humblot, 2001. 197–256.

32 Zoltán Tibor Pállinger: Monarchien im Europa von heute unter besonderer Berücksichtigung der neusten Verfassungsentwicklung im Fürstentum Liechtenstein. In: *Beiträge des Liechtenstein-Instituts*, 2003/18.

33 For an overview of the instruments of direct democracy in the Principality of Liechtenstein cf. Wilfried Marxer – Zoltán Tibor Pállinger: Direkte Demokratie in der Schweiz und in Liechtenstein – Systemkontexte und Effekte. *Beiträge des Liechtenstein-Instituts*, 2006/36.

parliament has to ratify international treaties and also has to consent to the budget. Furthermore, it is responsible for the control of the administration.

The government is situated between the two poles, monarch and people, of the Liechtenstein Constitution. It is responsible for implementation of the law, issueing decrees, and the management of the administration. If the government as a whole or one of its members loses the confidence of either the Prince or the parliament, its mandate terminates at once. This requirement of double confidence stems from the exigences of dualism.

The Liechtenstein system of government can best be understood analogous to the functional logics of semi-presidential systems, with the difference that a hereditary monarch is in the place of an elected president. Because political conflicts can rapidly become system-threatening in small states, the system is buffered by strong elements of concordance: The two biggest parties form most of the time a great coalition. Office appointments and chairs in committees are filled proportionally according to the strength of the parliamentary parties. In this context the Prince has an important rule in the management of political conflicts and compromise management.

Regarding the scope of internal sovereignty on has to point out the principle of rule of law: all authorities are bound by law: Art. 7 para. 1 Const. determines that „[t]he Reigning Prince […] shall exercise his rights pertaining to the powers of State in accordance with the provisions of this Constitution and of the other laws." The identical wording also applies for the government (Art. 78 para 1 Const) and also the parliament is bound by the constitution plus it may only exercise its rights when it is lawfully convened (Art. 45 para 1 and 2 Const.). Moreover, the scope of emergency decrees[34] may not suspend the Constitution as a whole or individual provisions thereof, but may only limit the applicability of individual provisions of the constitution (Art. 10 para 2 Const.). In the context of emergency decrees some fundamental rights are explicitely exempted from any limitation and the validity of these emergency decrees is also temporally limited (Art. 10 para 2 Const.).

In order to strengthen the democratic legitimisation of the strong position of the monarch, the people was granted – as mentioned above – with the constitutional changes of 2003 the possibility to call for a motion of no confidence against the Prince (Art. 13ter Const.) or to submit a popular initiative for abolition of the monarchy (Art. 113 Const.). While the first instrument has a rather non-binding petition-like character and is exclusively dealt with by the Princely House, with the second one a special procedure for the abolition of the monarchy was developed, in which the Prince has no veto right. Both of these instruments are of an exceptional character, but would not play any role in daily politics. However, they are expressing respect for the democratic principle.

[34] The right to issue emergency decrees belongs to the Prince. It is an open question in Liechtenstein constitutional doctrine if the government has to play a part hereby. Cf. Peter Bussjäger: Art. 10. In: Liechtenstein-Institut (ed.): *Kommentar zur liechtensteinischen Verfassung.* Online-Kommentar. Bendern, Liechtenstein-Institut, 2016., https://verfassung.li/Art._10#B._Der_Landesf.C3.BCrst_als_.E2.80.9ENotstandsgesetzgeber.E2.80.9C

The responsibilities of the Prince are manifold. In the first instance he represents the state in all its relations with foreign countries, without prejudice to the requisite participation of responsible government (Art. 8 Const.). The power of international representation comprises in particular the competence to sign international treaties, which the Prince does in his own name. However, important international treaties require the approval of the parliament as well. Furthermore, they may upon the decision of the parliament or upon demand by 1500 eligible voters or the request of four municipalities be put on a referendum vote. In practice almost all international treaties are submitted to the parliament for approval.

According to the principles of dualism the Prince is also involved in the legislative process. On the hand he is entitled to introduce bills in the form of government proposals (Art. 64 para 1 lit. a Const.). On the other hand, all bills need in order to enter into effet the approval of the Prince (Art. 9 Const.). In this process the Prince does not act as a mere „state notary", who has to sign and implement every bill which the parliament or the people have approved. Neither does he simply act as „guardian of the constitution", who only can refuse to sign a bill, when he has grave concerns regarding its constitutionality. On the contrary, he decides at his own, personal discretion if he will sign a bill or not. Thus, the Prince is granted an absolute right of veto in the legislative process. This power, however, is extremely rarely used. Its primary effects are rather indirect or preventive. They rather create incentives for the political actors to find consensual solutions prior to a possible veto.

The competences of the Prince extend also to field of justice. The entire administration of justice is carried out in the name of the Prince and the people by legally bound judges appointed by the Prince (Art. 95 para 1 Const.), who are, when engaged in judicial proceedings, independent (Art. 95 para 2 Const.). Furthermore, the Prince is also involved in the process of the selection of the judges (Art. 96 Const.), and is responsible for their appointment (Art. 11 Const.). Finally, the Prince has also the right of pardon, of mitigating or commuting legally adjudicated sentences, and of quashing initiated investigations (Art. 12 Const.).

In connection with the princely comeptences in the field of justice his role in the selection of judges has to be emphasised, because significance for the rule of law. Judges are proposed to the parliament by a „joint body", consisting of the prince, members delegated by the parliament and by the prince, in which the Prince has the right of veto. If the parliament agrees with the proposed list of judges, they are elected. If the parliament rejects the proposal, a popular vote on the proposed judges has to be held, if no consensus is reached within four weeks. In this case, the parliament is permitted to propose rival candidates for the popular vote. Finally, also the people can propose its own candidates by means of a popular initiative. The procedure of the selection of judges illustrates again the importance of dualism for the design of the political decision-making processes and provides strong evidence for the powerful position of the monarchy in the Prinicipality of Liechtenstein.

Furthermore, the Prince has also the right to to convene the parliament, to prorogue it, and, on significant grounds to be communicated each time to the assembly, to adjourn it for three months or to dissolve it (Art. 48 para 1 Const.). However, the convening of the parliament is not at the discretion of the Prince, he is obliged by

constitution to convene it at the beginning of each year (Art. 49 para 1 Const.). Traditionally the parliament is opened the speech from the throne by the Prince in person or by his plenipotentiary (Art. 54 para 1 Const.). This address gives the Prince the possibility asses the state of the principality and and to make policy proposals.

The right to dissolve the parliament provides the Prince with a political tool. New elections have to be held within six weeks of the dissolution of the parliament and the newly elected parliament has to be convened within 14 days (Art. 50 Const.). The right to dissolve the parliament is expression of the role of arbiter of the Prince. This competence shall contribute to the proper functioning of the institutions. That's why it is usually used to overcome political stalemates in the parliament, but it can also serve the Prince as a leverage in political conflicts. The princely competence is – as a consequence of the the principle of dualism – paralleld by the competence of the people and the municipalities to convene or dissolve the parliament (Art. 48 para 1 und 2 Const).

Concludingly, the competences of the Prince regarding the government shall be examined. The Prince appoints the prime minister and the other ministers with the agreement of parliament and on its proposal (Art 79 para 2 Const.). Both the Prince and the parliament can unilaterally dismiss the government, in this case the mandate of the government is terminated at once. For the period of the instalment of the new government the Prince appoints an intermim government. If no new government can be appointed by mutual agreement between Prince and parliament the interim government has to submit to a vote of confidence in parliament before the expiry of four months (Art. 80 para 1 Const.). If an individual minister should lose the confidence of the Prince or of the parliament, the decision on the loss of the authority of the Minister to exercise his functions shall be taken by mutual agreement by the Prince and parliament. Until a new minister has been appointed, the official duties of the minister shall be performed by the minister's alternate (Art. 80 para 2 Const.). All considered the mode of appointment and dismissal of the government is reflecting the dualist striving for an equilibrium between the monarchich and democratic element.

Finally the prime minister has to submit oral or written reports to the Prince with regard to matters subject to the disposal of the sovereign (Art. 86 para 1 Const). The Prince signs personally at the request of the head of government those decisions, which he wants to adopt. These are in turn countersigned by the prime minister. By doing so the latter accepts the political responsibility (Art. 86 para 2 Const.). These requirements regarding consultation and information obligations ensure that the Prince is adequately informed about the current affairs to be able to perform his constitutional duties duly. These consultations contribute moreover to the enhancement of the relation between Prince and government.

4. Conclusions

The Principality of Liechtenstein (as well as the Principality of Monaco) has not followed the trajectory of the other Europan monarchies on the way towards parliamentary monarchy. The Liechtenstein type of dualism can be seen as an attempt to couple traditional legitimisation of authority with (party-)political competition by

combining monarchy and democracy. The 300 years of rule of the princely House of Liechtenstein is a symbol of continuity and tradition in a fast-moving world. The monarchy is still firmly rooted in the minds of the Liechtenstein population and is an important pillar of the national identity. The Liechtenstein monarchy has turned out to be astonishingly flexible, it has always been able to date to adapt to the requirements of the time, while maintaining its own distinctive identity.

Unlike in most other European monarchies the monarchic element has not been reduced to purely representative functions, but still continues to play an active role in politics. Simultaneously – and that is original about Lichtenstein dualism – the (direct-)democratic elements of the political system are also well developed. This unique combination of monarchy and democracy is held together by the ties of rule of law. This is evidence for the fact that domestic sovereignty in Liechtenstein is not absolute. Neither the Prince nor the people stand above the law. They are not „de legibus absolutus", but bound by law. Given the fact that the scope of state intervention is limited both substantially and temporally, even the institution of the emergency decrees cannot be equated to „state of emergency" (Ausnahmezustand) of Carl Schmitt.

The Liechtenstein dualism must be considered a product of a political will, which succeded throughout history and still succeeds to reconcile competing interests and principles and to find sustainable solutions. From this perspective dualism does not represent a static equilibrium between Prince and the people, but serves as guinding principle for tackling consensually future challenges. Although the Prince disposes of more competences than the other European monarchs (with the exception of the Principality of Monaco), he is not the sole bearer of sovereignty, but shares it with the people. Since both, Prince and the people, have different competences, their cooperation is necessary for the normal and lawful functioning of the state. This implies that in the Liechtenstein understanding rests on the concept of state sovereignty.

Although different authors assume that monarchy and democracy are only compatible via a parliamentary form of government,[35] this perspective neglects possible direct-democratic forms of government. However, it is correct that today – at least in Europe – state power can only be legitimised through popular sovereignty. The Reinging Prince Hans-Adam II. of Liechtenstein seems to share this point of view: „I always held the opinion that a monarchy, which bears political responsibility today, needs to have a democratic legitimation. Religious legitimation is hardy acceptable in times of religious freedom."[36] To what extent the motion of no confidence and the initiative for abolition are sufficient in practice to support this claim is irrelevant in the context of this paper, because a normative reference to the principle of popular sovereignty is established by the existence of these instruments on a theoretical level. In the worst case they could represent as ultima ratio an

[35] Cf. Adolf KIMMEL: Einführung. In: Adolf KIMMEL (ed.): *Verfassungen der EU-Mitgliedstaaten.* München, Beck – DTV, 2000. IX.

[36] Quoted in PÁLLINGER (2003) op. cit. 7. (author's own translation).

alternative to revolution. Therefore, it can be stated that the present constitution of the Principality of Liechtenstein is displaying traits which point in the direction of popular sovereignty.

In conclusion, it can be stated that sovereignty belongs – In spite of the extensive competences of the monarch – to the state as a whole (state sovereignty) and is exercised according to established rules by both organs conjointly (separated organs of sovereignty) and is furthermore limited in scope (relative domestic sovereignty).