

# The Two Centennials: Austrian Flavours in the Constitution of Liechtenstein\*

by Anna Gamper

**Abstract:** To some extent, Austrian flavours are noticeable in the Constitution of Liechtenstein enacted one year after the Federal Constitutional Act of 1920. Most important of these is the institution of the State Court which, even though differing from the Austrian Constitutional Court, strongly relies on Austrian and Swiss case law, especially in a human rights context. Not only do Liechtenstein's own constitutional traditions go far back into the 19<sup>th</sup> century, however, but also the constitutional evolution over the past century – above all the reform of 2003 – are token of autochthonous developments in the specific context of a microstate and monarchy.

**Keywords:** Austria, constitution; constitutional borrowing; constitutional comparison; Liechtenstein, constitution; State Court.

847

## 1. Introduction

At first glance, the Austrian Federal Constitutional Act and the Constitution of Liechtenstein share a common feature: both constitutions are of similar age, have recently celebrated their 100<sup>th</sup> birthday – in 2020 and 2021 respectively – and, from international perspective, belong to just a small range of constitutions that have been continuously in force for a similarly long or even longer time<sup>1</sup>. A more detailed view reveals, however, that the

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<sup>1</sup> See, for a basic overview on both centennials, A. Gamper, *Symposium: 100 Years of the Austrian Federal Constitution and Constitutional Review: The Austrian Legacy to Constitutional Courts in Europe*, in *IACL-AICD Blog*, 01 October 2020, <https://blog-iacl-aicd.org/2020-posts/2020/10/1/guest-editorial-100-years-of-the-austrian-federal-constitution-and-constitutional-review-the-austrian-legacy-to-constitutional-courts-in-europe-g64wc>, and A. Gamper, *Guest Editorial: The Centenary of the Constitution of Liechtenstein*, in *IACL-AICD Blog*, 5 October 2021, <https://blog-iacl-aicd.org/centenary-constitution-liechtenstein/2021/10/5/guest-editorial-the-centenary-of-the-constitution-of-liechtenstein>. A survey on the constitutions that were already in force in 1920 and have been continued until today is given by A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 *ZöR* 1, 2020, 99, 101. See further, on the Austrian centennial, P. Bußjäger, A. Gamper, A. Kahl (Eds), *100 Jahre Bundes-Verfassungsgesetz. Verfassung und Verfassungswandel im nationalen und internationalen Kontext*, Wien, 2020; special issue of *Percorsi Costituzionali: I cento anni della Costituzione austriaca*, Napoli, 3/2019; A.

Constitution of Liechtenstein is in truth much older than the Austrian: it is based on the so-called *Konstitutionelle Verfassung* (“Constitutional Constitution”) of 1862, which was formally revised but not replaced in 1921<sup>2</sup>. Still, this revision of 1921 was a fundamental reform that even changed the title of the constitution into “The Constitution of the Principality of Liechtenstein of 5 October 1921” (*Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921*)<sup>3</sup>.

As a continued constitution, the Constitution of Liechtenstein is considerably older than the Austrian Federal Constitutional Act of 1920<sup>4</sup>. The revision of 1921, instead, was enacted one year after the Austrian Federal Constitutional Act and could thus certainly be inspired by the latter. This revision was nevertheless not a historically first constitution enacted from scratch but was built on a constitutional fundament of its own that itself had been rooted in earlier constitutions of the 19<sup>th</sup> century<sup>5</sup>.

For assessing the influence of the Austrian Federal Constitutional Act on the Constitution of Liechtenstein, it is, however, not sufficient to compare the two constitutions of 1920 and 1921 at the dates of their respective enactment. It is also important to consider that both constitutions underwent remarkable changes in the course of the following century – not just by formal constitutional amendments, but also by the adjudication of the respective constitutional courts, and by their membership to the ECHR and EEA respectively. Moreover, the fragmented Austrian Federal Constitution consists of many more pieces than just the Federal Constitutional Act of 1920, some of which also need to be regarded in this context<sup>6</sup>. Apart from

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Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021; special issue of 75 *ZöR: Festschrift 100 Jahre B-VG*, 1/2020; on the Liechtenstein centennial, see 76 *ZöR: Beiträge zum Kolloquium 100 Jahre-Jubiläum liechtensteinische Verfassung*, 4/2021; H. Hoch, C. Neier, P.M. Schiess Rütimann (Eds), *100 Jahre Liechtensteinische Verfassung. Funktionen, Entwicklung und Verhältnis zu Europa*, Gamprin-Bendern, 2021.

<sup>2</sup> P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. no. 12, [https://verfassung.li/Einführende\\_Bemerkungen\\_zur\\_liechtensteinischen\\_Verfassung](https://verfassung.li/Einführende_Bemerkungen_zur_liechtensteinischen_Verfassung); A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Vergleich*, in 76 *ZöR* 4, 2021, 1167 (1169).

<sup>3</sup> LGBl 1921/15.

<sup>4</sup> *Gesetz vom 1. Oktober 1920, womit die Republik Österreich als Bundesstaat eingerichtet wird (Bundes-Verfassungsgesetz)*, BGBl 1920/1.

<sup>5</sup> P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. no. 4 ff, [https://verfassung.li/Einführende\\_Bemerkungen\\_zur\\_liechtensteinischen\\_Verfassung](https://verfassung.li/Einführende_Bemerkungen_zur_liechtensteinischen_Verfassung); T. Müller, M. Wohlgemuth, *Kontinuität und Wandel. Zur Verfassungsgeschichte Liechtensteins*, Eschen, 2021, 19 ff.

<sup>6</sup> While the Federal Constitutional Act (“*Bundes-Verfassungsgesetz*”) constitutes the main constitutional document, several hundreds of other pieces of constitutional law (such as, e.g. constitutional laws, single constitutional provisions in ordinary laws and even some international treaties, such as the ECHR and most of its additional protocols)

formal Austrian constitutional law, also ordinary Austrian legislation, jurisprudence and doctrine have had general impact on the development of constitutional law and practice in Liechtenstein, even though not as directly imported legal transplants.

This article will focus on the role of Austrian federal constitutional law and constitutional case law for designing the Constitution of Liechtenstein in 1921 and developing it over a century<sup>7</sup>.

## 2. Austrian Transplants in the Text of the Liechtenstein Constitution

### 2.1 Dwindling Austrian Influence: the Drafting of the Revision of 1921

The end of World War I marked the political beginning of the process that led to the constitutional revision of 1921, but also a significant breakaway from the hitherto close relations<sup>8</sup> between Liechtenstein and the former Austro-Hungarian monarchy. It was the Parliament of Liechtenstein that demanded a constitutional reform in late 1918, the drafting and enactment of which finally took three years<sup>9</sup>. There was not much to recommend an

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form part of Austrian federal constitutional law, too. Also some previous laws enacted during the monarchy and early republican period, such as the State Basic Law on the General Rights of the Citizens of 1867, which entrenches a catalogue of fundamental rights, were received into Austrian federal constitutional law.

<sup>7</sup> The topic has already been explored from several perspectives: E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk et al. (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 435, 435 ff; P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmässige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 129 (129 ff); P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, 76 ZöR 2, 2021, 439, 439 ff; A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 114 ff and 122 ff; A. Gamper, *La Corte costituzionale austriaca come importatore ed esportatore di giurisprudenza costituzionale*, in *Percorsi Costituzionali 3: I cento anni della Costituzione austriaca*, Napoli, 2019, 823, 833 ff.

<sup>8</sup> A paradigmatic example is Sec I *Landständische Verfassung* of 9 November 1818 which had later been replaced by the *Konstitutionelle Verfassung* of 1862: “We now also adopt the landständische Verfassung existing in the ... [German-speaking parts of the Austrian Empire] in its essence as a pattern for our Principality ...”. See already P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. no. 4, [https://verfassung.li/Einführende\\_Bemerkungen\\_zur\\_liechtensteinischen\\_Verfassung](https://verfassung.li/Einführende_Bemerkungen_zur_liechtensteinischen_Verfassung).

<sup>9</sup> See, with more detail, P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmässige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 130 ff; P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 441 f; E. Melichar, *Die Liechtensteinische Verfassung*

“Austrian” model at that time: the German-speaking part of the lost Empire had, with considerable territorial losses, been reduced to a small republic that did not legally succeed the monarchy; and the transitory laws considered as Austria’s “interim constitution” just paved the way for the new republican constitution that was very different from the constitutional system that had been in force until 1918. Liechtenstein, in contrast, remained both a monarchy and a microstate, and even the continuity of its constitution was not formally disrupted. Neither had Switzerland undergone radical changes regarding its form of state or its territorial size; its federal constitution, being first enacted in 1848, remained in place, even though it had over time been subjected to several total revisions that did not, however, formally discontinue the historically first constitution of 1848. Moreover, Switzerland had not lost the war but remained neutral and economically stable while, even after the enactment of the Austrian Federal Constitution, it was unclear whether the small Austrian republic could survive both politically and economically<sup>10</sup>. Not surprisingly, Liechtenstein left the customs union with Austria in 1919 and entered into a customs union with Switzerland in 1923 which has since been extremely important for the relations between Liechtenstein and Switzerland<sup>11</sup>. Moreover, “autochthonous” authorities located in Liechtenstein replaced the former Austrian authorities that had been entrusted with political and judicial responsibilities on behalf of Liechtenstein<sup>12</sup>.

The so-called “Castle Agreements” between Prince John II and the representatives of the People’s Party of 15 September 1920 give evidence of the dwindling Austrian influence and the turn to Switzerland also with regard to the design of the constitutional reform<sup>13</sup>. While the Austrian Josef Peer was at that time Liechtenstein’s official administrator on behalf of

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1921 und die österreichische Bundesverfassung 1920, in B.-Ch. Funk *et al.* (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 435 ff.

<sup>10</sup> See, most recently, L. Khakzadeh-Leiler, *Das Scheitern der Ersten Republik und das B-VG 1920*, in 75 ZöR 1, 2020, 45 ff.

<sup>11</sup> LGBI 1923/24. R. Quaderer, *Der Weg zum Zollvertrag*, in *Zoll-Rundschau* 4: *Beilage “70 Jahre Zollvertrag Schweiz-Fürstentum Liechtenstein 1924-1994”*, Bern, 1993, 12 (12 ff); P. Bußjäger, *Art 8 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 31 August 2015), marg. no. 99 ff, <https://verfassung.li/Art. 8>.

<sup>12</sup> P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 440 ff.

<sup>13</sup> See, with more detail, P. Bußjäger, “*So weit dieselbe für Liechtenstein verwendbare und zweckmäßige Bestimmungen enthält.*” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 131 f; P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 441 ff; E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk *et al.* (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 436 ff.

Prince John II, the Prince consented to consult “a Catholic Swiss expert as an advisor regarding the establishment of institutions which are regulated by law and have proven themselves practically in Switzerland”<sup>14</sup>. Still, two constitutional drafts were prepared by Josef Peer who informed Josef Ospelt, the new head of government, on 18 April 1921: “As already mentioned in the parliamentary session of 8 March 1921, I used the constitutional draft prepared by Member of Parliament Dr. Beck for elaborating the governmental bill, further a compilation of the Swiss federal and cantonal constitutions which he gave to me, finally also the Austrian Constitution as far as it contains provisions that are useful and appropriate for Liechtenstein”<sup>15</sup>. The “Austrian style” attributed to Peer, however, had already met some hostility, as expressed by a local newspaper on 26 April 1919: A new “truly democratic” constitutional draft should be elaborated by a legal expert, not “by a lawyer educated in line with old-fashioned Austrian patterns, but by a capable lawyer of neighbouring Switzerland”<sup>16</sup>. Due to this not particularly Austro-phile political habitat, the influence of the Austrian Federal Constitutional Act of 1920 on the Constitution of 1921 was rather limited, seen also vis-à-vis the longer tradition of the Swiss Federal Constitution<sup>17</sup>. Nor, however, is the Constitution of 1921 a mirror image of the Swiss Federal Constitution, which becomes most obvious in the absence of republicanism and federalism which have always been strong features of Swiss constitutionalism. Particularly, however, the provisions on direct democracy in Liechtenstein bear a strong likeness to the Helvetian democratic tradition<sup>18</sup>, very much in contrast to the Austrian constitution-maker’s reluctance to establish strong instruments of direct democracy<sup>19</sup>.

<sup>14</sup> E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk et al. (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 437.

<sup>15</sup> See <http://www.e-archiv.li/textDetail.aspx?backurl=auto&etID=45319&elID=8>.

<sup>16</sup> *Oberrheinische Nachrichten*, 26 April 1919; see already A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 123.

<sup>17</sup> On the influence of both constitutions, see P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. no. 50,

[https://verfassung.li/Einführende\\_Bemerkungen\\_zur\\_liechtensteinischen\\_Verfassung](https://verfassung.li/Einführende_Bemerkungen_zur_liechtensteinischen_Verfassung);

G. Batliner, *Einführung in das liechtensteinische Verfassungsrecht (1. Teil)*, in G. Batliner (Ed), *Die liechtensteinische Verfassung 1921. Elemente der staatlichen Organisation*, Vaduz, 1994, 15 (22); E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk et al. (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 435 ff.

<sup>18</sup> A striking difference is, however, that in a number of cases where direct democracy is provided by the Liechtenstein Constitution the respective instrument is binding on the Parliament, but not the Prince.

<sup>19</sup> See, paradigmatically, H. Kelsen, G. Froehlich, A. Merkl (Eds), *Die Bundesverfassung vom 1. Oktober 1920*, Wien, 2003, 121.



Liechtenstein, moreover, already possessed an autochthonous constitutional tradition dating back to the *Konstitutionelle Verfassung* of 1862 which had replaced the former *Landständische Verfassung* of 1818<sup>20</sup>. The revision of 1921 thus was not just a merger between the Austrian and the Swiss Federal Constitution, but rather constituted a mosaic of both autochthonous and transplanted elements all of which, however, were adapted to the specific situation of the tiny Principality<sup>21</sup>.

## 2.2 The State Court

Still, however, some important traces of Austrian influence are visible in the Constitution of 1921<sup>22</sup>. The most striking constitutional transplant derived from the Austrian Federal Constitutional Act relates to the State Court (*Staatsgerichtshof*) which is the second-oldest constitutional court still practicing in the world today<sup>23</sup>. While the Swiss Federal Constitution has never established a specialized constitutional court, the Austrian Constitutional Court of 1920 even became the prototype of a specialized constitutional court<sup>24</sup>. This is the only noteworthy Austrian constitutional transplant borrowed (and further developed) by a majority of constitutions directly or indirectly across the globe; apart from it, the Austrian Federal Constitution's impact either in Europe or beyond has been very limited<sup>25</sup>.

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<sup>20</sup> P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. no. 8 ff, [https://verfassung.li/Einführende Bemerkungen zur liechtensteinischen Verfassung](https://verfassung.li/Einführende_Bemerkungen_zur_liechtensteinischen_Verfassung).

<sup>21</sup> See also A. Gamper, *Constitutional Transplants oder autochthones Verfassungsrecht? Wege der Verfassungsinnovation*, forthcoming.

<sup>22</sup> See already the surveys by E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk et al. (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 435 ff; P. Bußjäger, "Soweit dieselbe für Liechtenstein verwendbare und zweckmässige Bestimmungen enthält." *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 129 ff; P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 439 ff and A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 123 ff.

<sup>23</sup> See, in particular, P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 439 ff. No other specialized constitutional court, not even the Austrian, has, moreover, been permanently active for such a long time (H. Hoch, *Verfassungsgerichtsbarkeit im Kleinstaat – das Beispiel Liechtenstein*, in 76 ZöR 4, 2021, 1219, 1229).

<sup>24</sup> See, on that prototype and its worldwide influence, Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 109 ff and the special issue of 76 ZöR, 2/2021.

<sup>25</sup> See A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 106 ff. External perspectives are presented by A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021 and the special issue of *Percorsi Costituzionali. I cento anni della Costituzione austriaca*, Napoli, 3/2019.

Rooted in the interim German-Austrian Constitutional Court of 1919 and, even earlier, the *Reichsgericht* of 1867, the Austrian Constitutional Court had been established a few months after the Czechoslovakian Constitutional Court which, however, possessed fewer powers and did not long survive<sup>26</sup>. Both the Austrian Constitutional Court and the Liechtenstein State Court, however, did not only survive, but developed into highly successful courts with powers that were even expanded in the course of time<sup>27</sup>.

The Austrian influence on the shaping of the State Court is widely admitted<sup>28</sup>, although US and Swiss influences are recognized as well<sup>29</sup>; while it is true that the idea of constitutional review is theoretically rooted in the Federalist Papers<sup>30</sup> and practically first emerged with *Marbury vs Madison* (1803), the institution of a specialized constitutional court was indeed an Austrian “invention” owing at least much of its design, apart from older Austrian roots, to Hans Kelsen<sup>31</sup>.

Even though the Austrian Constitutional Court thus set the pattern for the State Court as a specialized constitutional court, the State Court, even at its beginning, was more than just a copy of the Austrian prototype. While the model as such, namely a specialised court responsible for constitutional review, was, therefore, transplanted from Austria to Liechtenstein, significant differences appear when the organisation and functions of both

<sup>26</sup> A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 109 ff.

<sup>27</sup> P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 443 ff.

<sup>28</sup> P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 439 ff; P. Bußjäger, *Symposium: The Liechtenstein State Court and the Austrian Federal Constitution*, in *IACL-AICD Blog*, 20 October 2020, <https://blog-iacl-aidc.org/100th-anniversary-of-the-austrian-constitutional-court/2020/10/20/the-liechtenstein-state-court-and-the-austrian-federal-constitution>; P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmäßige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 137; P. Bußjäger, *Verfassungsrecht im Kleinstaat. Zur Entwicklung der Verfassungsdogmatik in Liechtenstein*, in 66 JöR 1, 2018, 683, 691; W. Höfling, *Die Verfassungsgerichtsbarkeit in Liechtenstein*, in C. Starck, A. Weber (Eds), *Verfassungsgerichtsbarkeit in Westeuropa. Teilband I: Berichte*, Baden-Baden, 2007, 131, 133 and 137; G. Batliner, *Einführung in das liechtensteinische Verfassungsrecht (1. Teil)*, in G. Batliner (Ed), *Die liechtensteinische Verfassung 1921. Elemente der staatlichen Organisation*, Vaduz, 1994, 25; A. Vincze, H. Küpper, C. Fuchs, *Die Beziehungen zwischen der Verfassungsgerichtsbarkeit und den Obergerichten in Mitteleuropa. Eine vergleichende Analyse*, in 67 JöR 1, 2019, 601 (609 in Fn 20); A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 114 ff.

<sup>29</sup> W. Höfling, *Die Verfassungsgerichtsbarkeit in Liechtenstein*, in C. Starck, A. Weber (Eds), *Verfassungsgerichtsbarkeit in Westeuropa. Teilband I: Berichte*, Baden-Baden, 2007, 133.

<sup>30</sup> See A. Hamilton, *Federalist* No 78, 1788.

<sup>31</sup> On Hans Kelsen’s, but also Edmund Bernatzik’s and others’ contributions, E. Wiederin, *From the Federalist Papers to Hans Kelsen’s “Dearest Child”: The Genesis of the Austrian Constitutional Court*, in 76 ZöR 2, 2021, 313 ff.

courts are contrasted with each other in detail<sup>32</sup>. Accordingly, the State Court has always had its own, autochthonous features, even though it is doubtful whether this allows to speak of a genuine “Liechtenstein model”<sup>33</sup> of constitutional review.

A first difference between the two courts relates to their respective names: While the Austrian Court is called “Constitutional Court” (*Verfassungsgerichtshof*), the name of the Constitutional Court of Liechtenstein is “State Court” (*Staatsgerichtshof*). Even though a *Staatsgerichtshof*, entrusted with deciding on impeachment procedures, had been established during the Austro-Hungarian monarchy<sup>34</sup>, this institution was not received into the republican constitution, which instead entitled the interim German-Austrian Constitutional Court and, from 1920, the Constitutional Court to decide on impeachments. The Weimar Constitution of 1919, too, established a *Staatsgerichtshof* but did not entrust this court with the typical functions of a constitutional court; still, the term *Staatsgerichtsbarkeit* was used for describing an institutionalized form of constitutional review, as the reports by Heinrich Triepel and Hans Kelsen submitted to the *Staatsrechtslehrertagung* of 1928 show<sup>35</sup>.

Both in 1921 and today, the number of functions<sup>36</sup> of the State Court is slightly lower than that pertaining to the Austrian Constitutional Court<sup>37</sup>. Still, the two core functions of constitutional courts, namely judicial review and the protection of fundamental rights<sup>38</sup>, were already provided by the Constitution of 1921. Moreover, the power to decide on competence conflicts between the courts and administrative authorities, entrenched in Art 104 para 1 Constitution of Liechtenstein, almost literally resembled the previous

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<sup>32</sup> H. Hoch, *Verfassungsgerichtsbarkeit im Kleinstaat – das Beispiel Liechtenstein*, in 76 ZöR 4, 2021, 1224 ff.

<sup>33</sup> W. Höfling, *Die Verfassungsgerichtsbarkeit in Liechtenstein*, in C. Starck, A. Weber (Eds), *Verfassungsgerichtsbarkeit in Westeuropa. Teilband I: Berichte*<sup>2</sup>, Baden-Baden, 2007, 133.

<sup>34</sup> RGBl 1867/101.

<sup>35</sup> H. Triepel, *Wesen und Entwicklung der Staatsgerichtsbarkeit*, 5 *VVDStRL*, Berlin und Leipzig, 1929, 2 (2 ff); H. Kelsen, *Wesen und Entwicklung der Staatsgerichtsbarkeit*, 5 *VVDStRL*, Berlin und Leipzig, 1929, 30 (30 ff). See already A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 114 f.

<sup>36</sup> See, with more detail, H. Hoch, *Verfassungsgerichtsbarkeit im Kleinstaat – das Beispiel Liechtenstein*, in 76 ZöR 4, 2021, 1223 ff.

<sup>37</sup> See, for a comparison, already A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 115; E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk et al. (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 442 ff.

<sup>38</sup> See A. Stone Sweet, *Constitutional Courts*, in M. Rosenfeld, A. Sajó (Eds), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, 2012, 816, 823; V. Ferreres Comella, *The rise of specialized constitutional courts*, in T. Ginsburg, R. Dixon (Eds), *Comparative Constitutional Law*, Cheltenham, 2011, 265 (266 ff); T. Ginsburg, Z. Elkins, *Ancillary Powers of Constitutional Courts*, 87 *Texas Law Review*, 2008, 1431, 1434 ff.



Art 138 lit a Federal Constitutional Act of 1920. In principle, at least, also the provisions of 1921 on the protection of fundamental rights, judicial review and sanctions against impeached members of government were to some extent similar to Art 139, 140, 141, 142 and 144 Austrian Federal Constitutional Act of 1920. In 1958, the State Court further received the power, entrenched in Art 59, to hear electoral complaints<sup>39</sup>. Naturally, neither the Austrian Constitutional Court's powers related to the federal system nor the power to decide on an impeachment against the head of state have ever been transplanted into the constitution of Liechtenstein; nor a number of ancillary<sup>40</sup> powers that the Austrian Constitutional Court now – and some of them even then – possesses. From its beginning, however, the State Court has possessed one significant power that the Austrian Constitutional Court has never possessed<sup>41</sup>, namely to examine the constitutionality of the judgments of all other courts, including ordinary and administrative and even the two other apex courts (Princely Supreme Court and Administrative Court) of Liechtenstein. This power, however, was neither specifically enumerated in the Constitution of 1921 nor in today's Constitution that describe the Court's powers very generally, but in the ordinary State Court Act (*Gesetz über den Staatsgerichtshof*)<sup>42</sup>.

As regards the appointment of constitutional justices, Art 105 Constitution of 1921 only to some extent resembled Art 147 para 2 and 3 Federal Constitutional Act of 1920: the Federal Constitutional Act of 1920 just provided that the Austrian Constitutional Court consisted of the President, Vice-President and an “appropriate” number of members and substitutes. While the President, Vice-President, half of the members and substitutes were elected by the National Council, the other half of the members and substitutes was elected by the Federal Council, all of them for life. All other details, e.g. regarding the legal qualification of the constitutional judges, were left to an ordinary federal law, namely the Constitutional Court Act. The Liechtenstein Constitution of 1921 provided, instead, that the State Court consisted of the President and four judges and that all of them had to be elected by the Parliament; the appointment of the President, who had to be a Liechtenstein citizen by birth, further required the Prince's approval. While the majority of judges had to be Liechtenstein citizens by birth, only two of them had to have “knowledge of law”.

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<sup>39</sup> LGBI 1958/1.

<sup>40</sup> T. Ginsburg, Z. Elkins, *Ancillary Powers of Constitutional Courts*, 87 *Texas Law Review*, 2008, 1431. These powers of the Austrian Federal Constitutional Court comprise, *inter alia*, the power to decide on certain financial disputes or on issues related to parliamentary investigative committees.

<sup>41</sup> The Austrian Constitutional Court has never been entitled to scrutinise the judgments by the ordinary courts. In 2014, however, administrative courts were established in Austria, and the Constitutional Court has since been entitled to hear complaints against their decisions.

<sup>42</sup> LGBI 1925/8 as amended by LGBI 2020/312.

Both provisions were amended in later years, but in very different directions: Art 147 Austrian Federal Constitutional Act now entrenches much more detailed provisions, e.g. on the legal qualification of the justices, on their number (President, Vice-President and twelve judges) and on their appointment which is now the responsibility of the Federal President on the proposal of the Federal Government regarding six judges and three substitute judges, while only three judges and two substitute judges are proposed by the National Council, and three judges and one substitute judge by the Federal Council; that all of them need to be Austrian citizens is, both in 1920 and today, at least not explicitly stated in the Federal Constitutional Act. Their previously life-long tenure was changed to a retirement at the end of the year when they reach the age of 70, but this nevertheless allows them an unusually long term of office.

In contrast, Art 105 Constitution of Liechtenstein still provides that the Court consists of five members, but now adds explicitly that their must also be five substitute judges. The majority of judges (and substitute judges) must have Liechtenstein nationality (whether by birth or not) and have legal knowledge. Unlike the Austrian provision, Art 105 Constitution of Liechtenstein thus allows for a maximum of two foreign judges (and substitute judges) as well as two judges without legal qualification. Constitutionally, it is not excluded, however, that all judges and substitute judges are Liechtenstein citizens (which, in practice, they are not)<sup>43</sup> and have legal knowledge (which, in practice, they have). The appointment procedure was amended significantly in 2003<sup>44</sup> since they do not just need to be elected by the Parliament but also to be appointed by the Prince following a complicated procedure that applies to the appointment of ordinary judges and judges of the Administrative Court as well: a mixed judicial selection committee, consisting of national and foreign legal experts as well as national politicians, who are appointed by the Parliament or the Prince respectively, and being chaired by the Prince, proposes a candidate, provided that the Prince approves. This candidate is proposed to the Parliament that either elects the proposed candidate who is formally appointed by the Prince afterwards; or disapproves and, if no compromise is reached, proposes another candidate. The people may even propose further candidates and subsequently choose in a referendum which candidate should be appointed.

<sup>43</sup> The reason for admitting two foreign judges mainly lies in the microstate which, due to a limited number of national lawyers and possible partiality conflicts, requires foreign legal experts, especially those of similar jurisdictions (even though such “similarity” is not explicitly required by the Constitution). See, with more detail, H. Hoch, *Verfassungsgerichtsbarkeit im Kleinstaat – das Beispiel Liechtenstein*, in 76 ZöR 4, 2021, 1233 ff. On the reasons of other constitutions that allow the appointment of foreign judges see, most recently, A. Dziedzic, *Foreign Judges in the Pacific*, Oxford and Portland, 2021, and A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Vergleich*, in 76 ZöR 4, 2021, 1185 ff.

<sup>44</sup> LGBI 2003/186. See also P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 444.

This selection process results from the constitutional reform of 2003 which, on the whole, strengthened the constitutional position of the Prince. Even though the ultimate power of electing a judge lies with the people, the Prince is very powerful in the selection of constitutional judges. However, the procedure also grants more transparency and diversity than most “politicized” appointment procedures applicable for other constitutional courts. Moreover, the inclusion of foreign lawyers, both in the electoral college and as possible candidates for office, allows more independence from national party politics than can be usually found in the appointment procedures of other countries.

The (renewable) term of office of the constitutional judges, who may elect their own President, is just five years which is clearly below the European average of a constitutional judge’s term of office (between ten and fifteen years)<sup>45</sup> and much more below that of Austrian constitutional judges; this may be due to the conditions of a microstate whose national constitutional judges, mostly professional barristers, work part-time, but also to the idea of a temporal separation of powers.

### 2.3 Other Austrian Transplants

Apart from the specialised constitutional court, also other Austrian legal transplants can be traced in the Constitution of Liechtenstein, even though they are less visible<sup>46</sup>. Again, these are hardly any direct transplants in the sense that the exact wording of an Austrian provision could or can be found in the Constitution of Liechtenstein. But a number of provisions shows striking similarities: one example was the so-called *Verwaltungsbeschwerde-Instanz* (“Administrative Complaint-Agency”) that had been influenced by the Austrian Administrative Court (*Verwaltungsgerichtshof*)<sup>47</sup> and was even

<sup>45</sup> V. Ferreres Comella, *The rise of specialized constitutional courts*, in T. Ginsburg, R. Dixon (Eds), *Comparative Constitutional Law*, Cheltenham, 2011, 270; A. Stone Sweet, *Constitutional Courts*, in M. Rosenfeld, A. Sajó (Eds), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, 2012, 824; A. Gamper, *Verfassungsrechtliche Voraussetzungen des öffentlich-rechtlichen Richteramts in Österreich und Europa*, in K. Giese, G. Holzinger, C. Jabloner (Eds), *Verwaltung im demokratischen Rechtsstaat: Festschrift für Harald Stolzlechner zum 65. Geburtstag*, Wien, 2013, 137, 147.

<sup>46</sup> See, for a survey, already E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk et al. (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 438 ff; P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmäßige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 133 ff and A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 122 ff.

<sup>47</sup> P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. no. 17, [https://verfassung.li/Einführende\\_Bemerkungen\\_zur\\_liechtensteinischen\\_Verfassung](https://verfassung.li/Einführende_Bemerkungen_zur_liechtensteinischen_Verfassung),

renamed *Verwaltungsgerichtshof* in 2003<sup>48</sup>. Art 39 Constitution of Liechtenstein almost literally repeats Art 14 para 2 of the Austrian State Basic Law on the General Rights of the Citizens of 1867 which is also part of the Austrian Federal Constitution<sup>49</sup>. Although many other fundamental rights entrenched in the Constitution of 1921 correspond to fundamental rights guaranteed by the Austrian Federal Constitution, even more similarities can be found to the Swiss Federal Constitution in this regard; moreover, also the *Konstitutionelle Verfassung* of 1862 had already entrenched a catalogue of fundamental rights. Not all similarities between fundamental rights, therefore, should be specifically associated with the Austrian Federal Constitution.

Moreover, the existence of autochthonous<sup>50</sup> non-constitutional Liechtenstein law that inspired the revision of 1921 must not be neglected: An example is the distinction between the autonomous and delegated municipal spheres in Art 110 Constitution of Liechtenstein which dates back to the old Liechtenstein Municipalities Act of 24 May 1864, and not to the Austrian Federal Constitutional Act even though the latter provides the same distinction<sup>51</sup>. Likewise, the electoral principles entrenched in Art 46 Constitution of Liechtenstein are held to be similar, but not influenced by Art 26 Austrian Federal Constitutional Act<sup>52</sup>, and they obviously lacked one important element: it took until 1984 until female suffrage was introduced in Liechtenstein<sup>53</sup>, which had been established 66 years earlier in Austria<sup>54</sup>. Minor influences of Art 8 Austrian Federal Constitutional Act were seen in

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and E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk *et al.* (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 440 ff.

<sup>48</sup> LGBI 2003/186.

<sup>49</sup> See A. Gamper, *Art 39 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 15 November 2017), marg. no. 8, <https://verfassung.li/Art.39>. Similarly, Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk *et al.* (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 439.

<sup>50</sup> See A. Gamper, *Autochthoner versus europäischer Konstitutionalismus? Ein Streifzug durch die liechtensteinische Verfassung*, in H. Schumacher, W. Zimmermann (Eds), *90 Jahre Fürstlicher Oberster Gerichtshof: Festschrift für Gert Delle Karth*, Wien, 2013, 263 (263 ff).

<sup>51</sup> P.M. Schiess Rütimann, *Art 110 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 14 January 2016), marg. nos. 6, 32 and 41, <https://verfassung.li/Art.110>.

<sup>52</sup> P. Bußjäger, *Art 46 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 05 February 2016), marg. no. 76, <https://verfassung.li/Art.46>; P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmäßige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 134 ff.

<sup>53</sup> LGBI 1984/27.

<sup>54</sup> A. Gamper, “Without Distinction on Grounds of Sex” – 100 Years of Female Suffrage in Austria, in Verfassungsgerichtshof (Ed), *100 Jahre Verfassungsgerichtshof 1920–2020*, Wien, 2021, 57 ff.

the language provision of Art 6 Constitution of Liechtenstein which provides German as official and state language<sup>55</sup>, while it is doubtful<sup>56</sup> whether the former Art 3 para 2 Austrian Federal Constitutional Act influenced Art 4 Constitution of Liechtenstein with regard to changes of municipal boundaries. The latter provision, moreover, was amended in 2003 with a view to grant the municipalities a limited right of secession, which has definitely not been borrowed from any other constitution, but is a unique provision even from global perspective<sup>57</sup>. Rather a “migration of a constitutional idea”<sup>58</sup> than a concrete constitutional transplant from Austria was connoted with the hierarchy of legal sources and the legality principle that was also entrenched in the Constitution of Liechtenstein and, like Art 18 para 1 Federal Constitutional Act, explicitly applied to the “whole” administration (Art 78 and 92 para 2 Constitution of Liechtenstein), while, as in Austria, it was seen as a matter of course, that it implicitly applied also to the judiciary<sup>59</sup>. Apart from the Austrian Federal Constitution, moreover, also ordinary Austrian laws seem to have influenced some provisions of the Constitution of Liechtenstein, such as Art 5 that regulates the official colours and coat of arms of Liechtenstein<sup>60</sup>.

But there are also striking differences between the two constitutions: most obviously, they relate to the form of state as a monarchy or a republic and as a unitary microstate or a federal state respectively. They also become

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<sup>55</sup> P. Bußjäger, *Art 6 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 31 August 2015), marg. no. 4 f, <https://verfassung.li/Art. 6>.

<sup>56</sup> This is suggested by P. Bußjäger, *Art 4 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 03 September 2015), marg. no. 20, <https://verfassung.li/Art. 4>.

<sup>57</sup> See, with more detail, A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Vergleich*, in 76 ZöR 4, 2021, 1188 f; P. Bußjäger, *Art 4 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 03 September 2015), marg. no. 61, <https://verfassung.li/Art. 4>. Art 39 para 1 and 4 Constitution of Ethiopia, Art 338 et seq. Constitution of Papua Neuguinea, Art 113, Art 115 and Schedule 3 Constitution of Saint Kitts and Nevis and Art 74 Constitution of Uzbekistan entrench regional, but not municipal secession rights.

<sup>58</sup> See, more generally, S. Choudhry (Ed), *The Migration of Constitutional Ideas*, Cambridge, 2007.

<sup>59</sup> G. Batliner, *Einführung in das liechtensteinische Verfassungsrecht (1. Teil)*, in G. Batliner (Ed), *Die liechtensteinische Verfassung 1921. Elemente der staatlichen Organisation*, Vaduz, 1994, 27 f; E. Melichar, *Die Liechtensteinische Verfassung 1921 und die österreichische Bundesverfassung 1920*, in B.-Ch. Funk et al. (Eds), *Staatsrecht und Staatswissenschaften in Zeiten des Wandels: Festschrift für Ludwig Adamovich zum 60. Geburtstag*, Wien, 1992, 439; P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmäßige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 135 ff.

<sup>60</sup> P. Bußjäger, *Art 5 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 31 August 2015), marg. no. 5, <https://verfassung.li/Art. 5>.



evident in the differing concepts of democracy<sup>61</sup>, but also in the distinction between a “rules-of-the-game-constitution” and a “substantialized” constitution: while the Austrian Federal Constitutional Act of 1920 belonged to the former category, lacking any provisions on state aims or programmatic guidelines (which were, however, added in later decades), the Constitution of 1921 already included a written catalogue on the “tasks of the state”<sup>62</sup>.

Moreover, while the Austrian Federal Constitution had already been a fragmented constitution in 1920 and, over the past century, even developed into the most fragmented constitution of the world<sup>63</sup>, the Constitution of Liechtenstein, without entrenching an explicit incorporation rule, has remained – more or less –<sup>64</sup> the only constitutional document.

Both constitutions build on a couple of leading constitutional principles that are in line with the concept of Western constitutionalism, namely democracy, separation of powers, rule of law and human rights; additionally, the Austrian Federal Constitution is coined by the principles of federalism and republicanism, while monarchy<sup>65</sup> is a leading principle of the Constitution of Liechtenstein. It is remarkable, however, that the Constitution of 1921 provided just one uniform constitutional amendment procedure (Art 112 para 2) that did not distinguish between different kinds

<sup>61</sup> This becomes particularly evident in the different types of referendum in Liechtenstein, especially when combined with a popular initiative; see, e.g., P. Bußjäger, *Art 64 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 10 February 2017), marg. no. 17, <https://verfassung.li/Art.64>, on the fact that a popular initiative in Liechtenstein should have stronger effects than just being treated in a parliamentary meeting, as in Austria.

<sup>62</sup> P.M. Schiess Rütimann, *Einführende Bemerkungen zum III. Hauptstück: Von den Staatsaufgaben*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 30 September 2016), marg. no. 20, [https://verfassung.li/Einführende Bemerkungen zum III. Hauptstück](https://verfassung.li/EinführendeBemerkungenzumIII.Hauptstück). See also P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmässige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 136; P. Bußjäger, *Symposium: A Constitution of Values? The Constitution of the Principality of Liechtenstein and its State Goals*, in *IACL-AICD Blog*, 07 December 2021, <https://blog-iacl-aidc.org/2021-posts/2021/12/7/a-constitution-of-values-the-constitution-of-the-principality-of-liechtenstein-and-its-state-goals-bhfyv>.

<sup>63</sup> See, with more detail, A. Gamper, *Änderung und Schranken der Verfassung*, in P. Bußjäger, A. Gamper, A. Kahl (Eds), *100 Jahre Bundes-Verfassungsgesetz. Verfassung und Verfassungswandel im nationalen und internationalen Kontext*, Wien, 2020, 49, 50.

<sup>64</sup> A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Verfassungsvergleich*, in 76 *ZöR* 4, 2021, 1172 f; P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. nos. 64 and 74, [https://verfassung.li/Einführende Bemerkungen zur liechtensteinischen Verfassung](https://verfassung.li/EinführendeBemerkungenzurliechtensteinischenVerfassung).

<sup>65</sup> The inherent tensions between the monarchy and the other leading principles of the Constitution of Liechtenstein have been widely examined, but shall not be analysed in this context.

of revisions, not even when they related to the leading constitutional principles. In contrast, Art 44 para 3 Austrian Federal Constitutional Act – apart from three other qualified amendments procedures applicable under other constitutional provisions –<sup>66</sup> distinguishes between a partial and total revision of the Federal Constitution which, in the latter case, means that at least one constitutional principle is amended seriously and requires a binding referendum<sup>67</sup>. It was only in 2003 that a second type of constitutional amendment procedure (Art 113) was adopted in Liechtenstein which is solely applicable for abolishing the monarchy, without, however, replacing the general amendment procedure as an alternative for the same purpose<sup>68</sup>. While this special amendment procedure is extremely long and complicated, but finally allows the abolition of the monarchy even against the Prince’s wishes, if the people (who are also entitled to initiate this procedure) so choose in a referendum, the general amendment procedure is much shorter but grants the Prince the power of an absolute veto. Whether the special procedure can be regarded as a qualified amendment procedure, is doubtful, though: both amendment procedures entrench different hurdles, and it depends on the political situation which procedure would be more successful<sup>69</sup>.

A final point to be mentioned here relates to language: both constitutions are written in German as the (only) state language and were enacted in the same historical period. Still, the constitutional language differs slightly between them, and has already done so in 1921: on the whole, the Constitution of Liechtenstein is shorter and written in simple, down-to-earth language, rather similar to the Swiss Federal Constitution, while the language of the Austrian Federal Constitutional Act is more subtle and complicated. But also technical terms differ sometimes, e.g. with regard to the terms *Landesangehörige* (“citizens of the *Land*”) and *Staatsbürger* (“citizens of the state”) or with regard to the term *Land* which either means a component region of the federal republic of Austria or the whole Principality of Liechtenstein respectively; accordingly, the *Landtag* (“Land Diet”) in Austria is the term used for a regional parliament, while it is the name of the

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<sup>66</sup> See Art 2 para 3, Art 35 para 4, Art 44 para 2 Austrian Federal Constitutional Act.

<sup>67</sup> See, with more detail, A. Gamper, *Revisione e “manutenzione” della costituzione austriaca*, in F. Palermo (Ed), *La “manutenzione” costituzionale*, Padua (Cedam), 2007, 55 ff.

<sup>68</sup> LGBI 2003/186. P. Bußjäger, M. Ritter, *Art 113 LV*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 27 April 2021), [https://verfassung.li/Art\\_113](https://verfassung.li/Art_113). See A. Gamper, *Symposium: Guest Editorial: 100 Years of the Austrian Federal Constitution and Constitutional Review: The Austrian Legacy to Constitutional Courts in Europe*, in *IACL-AICD Blog*, 01 October 2020, <https://blog-iacl-aicd.org/100th-anniversary-of-the-austrian-constitutional-court/2020/10/1/guest-editorial-100-years-of-the-austrian-federal-constitution-and-constitutional-review-the-austrian-legacy-to-constitutional-courts-in-europe>; A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Verfassungsvergleich*, in 76 *ZöR* 4, 2021, 1181 ff.

<sup>69</sup> A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Verfassungsvergleich*, in 76 *ZöR* 4, 2021, 1182.

national parliament in Liechtenstein. One other example is the term *verfassungsmässig* (“in accordance with the constitution”) in Art 104 para 1 Constitution of Liechtenstein, while the Austrian Federal Constitutional Act uses the term *verfassungsgesetzlich* (“in accordance with constitutional law”) when referring to fundamental rights – accordingly, the respective rights are guaranteed “in accordance with the constitution” or “by constitutional law”, which, however, makes little substantive difference.

### 3. The Evolution of the Constitution of Liechtenstein in the Light of the Austrian Federal Constitution

#### 3.1 General Developments

The number of constitutional amendments since the enactment of the Federal Constitutional Act has been extraordinarily high in Austria: since its re-enactment in 1930, it has been amended 132 times so far<sup>70</sup>. Moreover, it is not just the Federal Constitutional Act that has been amended, but many other pieces of federal constitutional law, which, together with the Federal Constitutional Act, compose the fragmented body of the Austrian Federal Constitution. In contrast, the Constitution of Liechtenstein has been amended 39 times<sup>71</sup>. These amendments have neither been particularly influenced by the Austrian Federal Constitutional Act nor by its amendments. Most of the amendments to the Constitution of Liechtenstein have had a piecemeal nature, dealing with courts, the government, direct democracy, or other individual issues<sup>72</sup>. Partly through constitutional amendment, partly through ordinary legislation, the State Court received further powers regarding the review of electoral irregularities, the examination of state treaties and the decisions on direct complaints of persons violated in their fundamental rights – powers which the Austrian Constitutional Court already possessed and which were, more or less, transplanted from Austria<sup>73</sup>.

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<sup>70</sup> See, on the frequency of amendment, A. Gamper, *Änderung und Schranken der Verfassung*, in P. Bußjäger, A. Gamper, A. Kahl (Eds), *100 Jahre Bundes-Verfassungsgesetz. Verfassung und Verfassungswandel im nationalen und internationalen Kontext*, Wien, 2020, 50. See, for the latest amendment, BGBl I 2022/85.

<sup>71</sup> See, for the latest amendment, LGBI 2020/357.

<sup>72</sup> P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. nos. 22 ff, [https://verfassung.li/Einführende\\_Bemerkungen\\_zur\\_liechtensteinischen\\_Verfassung](https://verfassung.li/Einführende_Bemerkungen_zur_liechtensteinischen_Verfassung).

<sup>73</sup> Similarly, P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmässige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 138 f; P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 443.

The largest and most controversial of all revisions to the Constitution of Liechtenstein was the reform of 2003<sup>74</sup> which was critically monitored by the Council of Europe's Venice Commission<sup>75</sup>. It vested the Prince with even stronger powers than before, but introduced also a number of other elements, such as the aforementioned procedure of appointing judges, the limited secession right of municipalities and the special procedure to abolish the monarchy. Obviously, the Austrian Federal Constitutional Act did not influence this reform, even though the controversial amendment to the Federal Constitutional Act of 1929<sup>76</sup> had vested the Austrian head of state with stronger powers and changed the parliamentary into a semi-presidential system.

### 3.2 Importing from Austria: the State Court's Case Law

However, the past century also entailed further congruence between the constitutions of Austria and Liechtenstein. This is not just a specifically constitutional phenomenon, but can be generally observed in the close relationship between the legal systems of Liechtenstein and Austria: it does not only rely on legal transplants *stricto sensu*, but also on academic exchange as well as cross-border legal teaching in Liechtenstein and some neighbouring Austrian and Swiss universities, on Austrian lawyers that are appointed as judges of the ordinary courts, the Administrative Court and the State Court and on the frequent use of Austrian precedents by these courts<sup>77</sup>.

The congruence between Austrian and Liechtenstein constitutional law and practice is based on several reasons: one reason is not specifically rooted in either of the two countries, but rather derives from their membership to both the ECHR and – although Liechtenstein is, unlike Austria, no member of the EU – the EEA respectively. As a consequence, the Convention rights as well as EEA-related law are applicable in both Austria and Liechtenstein. But it is not just a set of rules that they thus have in common. They also need to apply the interpretation that is given to these rules by the relevant inter- and supranational courts, such as the ECtHR in case of the Convention rights that have formal federal constitutional rank in Austria, while they enjoy “*de facto*” constitutional status<sup>78</sup> in Liechtenstein.

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<sup>74</sup> LGBl 2003/186.

<sup>75</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on the amendments to the constitution of Liechtenstein proposed by the princely house of Liechtenstein*, Opinion no. 227/2002, 16 December 2002, CDL-AD (2002) 32 ff.

<sup>76</sup> BGBl 1929/392.

<sup>77</sup> S. Wolf, P. Bußjäger, P.M. Schiess Rütimann, *Law, small state theory and the case of Liechtenstein*, in 1 *Small States & Territories* 2, 2018, 183 (191); P. Bußjäger, *Eigenständige Verfassungsdogmatik am Alpenrhein? Der Einfluss österreichischer und schweizerischer Staatsrechtslehre am Beispiel des Staatsgerichtshofes*, in S. Wolf (Ed), *State Size Matters. Politik und Recht im Kontext von Kleinstaatlichkeit und Monarchie*, Wiesbaden, 2016, 15 ff.

<sup>78</sup> See, e.g., StGH 2005/79 para 3; StGH 2009/202 para 10.1. P. Bußjäger, *Einführende Bemerkungen zur liechtensteinischen Verfassung*, in Liechtenstein-Institut (Ed), *Kommentar*

Fundamental rights have thus been developed dynamically in both countries since the 1980s<sup>79</sup>. But it is not the result of a specifically Austrian influence on the Constitution of Liechtenstein that the State Court's and the Constitutional Court's judicial activism is in line with the European Court of Human Rights' evolutive interpretation of the ECHR, which is cited extensively by both of them.

One important reason for the Austrian Federal Constitution's ongoing influence on the Constitution of Liechtenstein, however, is also owing to the State Court. As mentioned before<sup>80</sup>, only the majority of the five constitutional justices – the same condition applies to the judges of the Administrative Court – has to possess Liechtenstein nationality. Traditionally, therefore, one justice has been a Swiss and the other an Austrian lawyer, and the same is usual for the substitute judges<sup>81</sup>. On the one hand, this possibility safeguards sufficient constitutional expertise which is important for a microstate, while, on the other hand, the two jurisdictions from which the Constitution of Liechtenstein mostly borrowed remain “involved” in ongoing constitutional practice<sup>82</sup>. Through permanently importing constitutional law, legal traditions and case law from both Austria and Switzerland, the interpretation of the Constitution of Liechtenstein is coined by the interpretation of these two neighbouring constitutions. This dynamic process clearly goes beyond the static influence of the Austrian and Swiss Federal Constitution in the year 1921, since it allows to consider the most recent constitutional developments and, particularly, the recent responses given to the same or similar constitutional problems by Swiss or

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*zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 February 2016), marg. nos. 64 and 88, [https://verfassung.li/Einfuehrende\\_Bemerkungen\\_zur\\_liechtensteinischen\\_Verfassung](https://verfassung.li/Einfuehrende_Bemerkungen_zur_liechtensteinischen_Verfassung);

G. Batliner, *Die liechtensteinische Rechtsordnung und die Europäische Menschenrechtskonvention*, in P. Geiger, A. Waschkuhn (Eds), *Liechtenstein: Kleinheit und Interdependenz*, Vaduz, 1990, 91 (145 ff), especially 149 ff; P. Bußjäger, L. Langer, *Einführende Bemerkungen zum IV. Hauptstück*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 July 2019), marg. nos. 20 and 22 ff, [https://verfassung.li/Einfuehrende\\_Bemerkungen\\_zum\\_IV\\_Hauptstueck](https://verfassung.li/Einfuehrende_Bemerkungen_zum_IV_Hauptstueck).

<sup>79</sup> P. Bußjäger, “Soweit dieselbe für Liechtenstein verwendbare und zweckmäßige Bestimmungen enthält.” *Der Einfluss des B-VG auf die Verfassung des Fürstentums Liechtenstein*, in A. Balthasar, A. Vincze (Eds), *Hundert Jahre österreichisches Bundes-Verfassungsgesetz. Die Perspektive von außen*, Wien, 2021, 137. While Austria ratified the ECHR in 1958 and retroactively declared its constitutional status in 1964, Liechtenstein ratified the ECHR only in 1982.

<sup>80</sup> See above 2.2.

<sup>81</sup> See, with more detail, H. Hoch, *Verfassungsgerichtsbarkeit im Kleinstaat – das Beispiel Liechtenstein*, in 76 *ZöR* 4, 2021, 1233 ff.

<sup>82</sup> P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 *ZöR* 2, 2021, 444; P. Bußjäger, *Eigenständige Verfassungsdogmatik am Alpenrhein? Der Einfluss österreichischer und schweizerischer Staatsrechtslehre am Beispiel des Staatsgerichtshofes*, in S. Wolf (Ed), *State Size Matters. Politik und Recht im Kontext von Kleinstaatlichkeit und Monarchie*, Wiesbaden, 2016, 15 ff; A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Vergleich*, in 76 *ZöR* 4, 2021, 1191.



Austrian courts. Unlike the Austrian Constitutional Court that does not cite the State Court's case law (and hardly ever that of other foreign constitutional courts) which is mainly due to its positivist methodology<sup>83</sup>, the State Court follows a pluralistic<sup>84</sup> interpretive approach which includes the frequent use of foreign precedents – not just of Swiss or Austrian courts, but also of the German Federal Constitutional Court and, of course, judgments of the ECtHR and ECJ<sup>85</sup>. The State Court also holds that laws of Liechtenstein that were borrowed from Austria or Switzerland need to be understood in accordance with their original legal habitats and their own case law and jurisprudence<sup>86</sup>.

A recent survey of the State Court's decisions that have been published in its official database<sup>87</sup> – even though the number of unpublished decisions is much larger – shows that from 2000 to early 2020 about 50 of these decisions cited the Austrian Constitutional Court (let alone other Austrian courts, Austrian academic literature or the Austrian Federal Constitution itself)<sup>88</sup>. In nearly all of these cases, the State Court followed the relevant decisions of the Austrian Constitutional Court<sup>89</sup>. While the length of the quotations varies, the State Court sometimes cites its own standing case law according to which the standing case law of the Austrian Constitutional Court is cited. Frequently, the State Court just mentions *obiter* that the

<sup>83</sup> A. Gamper, *Austria: Non-cosmopolitan, but Europe-friendly – The Constitutional Court's Comparative Approach*, in T. Groppi, M.-C. Ponthoreau (Eds), *The Use of Foreign Precedents by Constitutional Judges*, Oxford and Portland, Oregon, 2013, 213 (218 f).

<sup>84</sup> See, e.g., StGH 2011/181 para 2.2; similarly, StGH 1998/37 para 2.4; StGH 2006/24 para 3.1; StGH 2010/104 para 3.3.1; StGH 2010/158 para 2.3; StGH 2011/025 para 2.3.1; StGH 2012/075 para 3.3; StGH 2012/176 para 5. P. Bußjäger, L. Langer, *Einführende Bemerkungen zum IV. Hauptstück*, in Liechtenstein-Institut (Ed), *Kommentar zur liechtensteinischen Verfassung. Online-Kommentar* (updated: 22 July 2019), marg. no. 20, [https://verfassung.li/Einführende\\_Bemerkungen\\_zum\\_IV.\\_Hauptstück](https://verfassung.li/Einführende_Bemerkungen_zum_IV._Hauptstück).

<sup>85</sup> P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 447 and H. Hoch, *Verfassungsgerichtsbarkeit im Kleinstaat – das Beispiel Liechtenstein*, in 76 ZöR 4, 2021, 1229 ff.

<sup>86</sup> See, e.g., StGH 2013/038, para 2.2 and 2018/111 para 4.2 (with further references why, according to the State Court, deviations from standing foreign case law should be well-reasoned). See also P. Bußjäger, *Eigenständige Verfassungsdogmatik am Alpenrhein? Der Einfluss österreichischer und schweizerischer Staatsrechtslehre am Beispiel des Staatsgerichtshofes*, in S. Wolf (Ed), *State Size Matters. Politik und Recht im Kontext von Kleinstaatlichkeit und Monarchie*, Wiesbaden, 2016, 16 in Fn 2 and P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 444.

<sup>87</sup> <https://www.gerichtsentscheidungen.li/>.

<sup>88</sup> See A. Gamper, *La Corte costituzionale austriaca come importatore ed esportatore di giurisprudenza costituzionale*, in *Percorsi Costituzionali 3: I cento anni della Costituzione austriaca*, Napoli, 2019, 833 ff. Some examples are further illustrated by P. Bußjäger, *The Influence of the Austrian Constitutional Court on the Constitutional Court of the Principality of Liechtenstein*, in 76 ZöR 2, 2021, 445 ff.

<sup>89</sup> A. Gamper, *La Corte costituzionale austriaca come importatore ed esportatore di giurisprudenza costituzionale*, in *Percorsi Costituzionali 3: I cento anni della Costituzione austriaca*, Napoli, 2019, 833.

Austrian Constitutional Court “also” decided a similar question in a similar way. Sometimes, however, the citation gives the impression that the Austrian constitutional case law actually inspired the State Court’s decision from the very beginning. Only in a small number of cases, the State Court explicitly mentioned the Austrian Constitutional Court’s law “negatively”<sup>90</sup>, i.e. quoted a case but at the same time stated that the applicable law in Liechtenstein differed from the Austrian law so that the Austrian constitutional case law was not considered relevant. A recent decision of this latter category<sup>91</sup> concerned the question whether the prohibition of same-sex marriages in Liechtenstein was constitutional. In recent years, numerous constitutional and other apex courts<sup>92</sup>, including the Austrian Constitutional Court<sup>93</sup>, had repealed such prohibitions. The State Court, in contrast, even though it cited the Austrian judgment, found the prohibition constitutional, stating that the law regulating the legal position of children in Liechtenstein<sup>94</sup> differed from the relevant Austrian law. It is remarkable that the State Court did not follow the liberalizing trend of some other Western constitutional courts: even though it could just have copied the Austrian Constitutional Court’s decision that had been taken shortly before its own decision, it chose to decide differently. Still, the State Court did not refrain from quoting the Austrian decision and openly explaining why it chose another path. This transparent and reasoned approach is commendable especially in the context of decisions that may become controversial because of underlying ideologies and “political-question”-affinity<sup>95</sup>.

<sup>90</sup> Cf, e.g., StGH 2012/83; StGH 2013/094; in its judgment StGH 2012/83, the State Court mentioned the Austrian Constitutional Court both by a “positive” and “negative” reference. See already A. Gamper, *La Corte costituzionale austriaca come importatore ed esportatore di giurisprudenza costituzionale*, in *Percorsi Costituzionali 3: I cento anni della Costituzione austriaca*, Napoli, 2019, 834.

<sup>91</sup> StGH 2018/154; see already A. Gamper, *La Corte costituzionale austriaca come importatore ed esportatore di giurisprudenza costituzionale*, in *Percorsi Costituzionali: I cento anni della Costituzione austriaca*, Napoli, 2019, 834 f; A. Gamper, *Die liechtensteinische Verfassung im globalen und europäischen Vergleich*, in 76 ZöR 4, 2021, 1191.

<sup>92</sup> See, from comparative perspective, A. Sperti, *Constitutional Courts, Gay Rights and Sexual Orientation Equality*, Oxford and Portland, Oregon, 2017.

<sup>93</sup> VfSlg 20.225/2017.

<sup>94</sup> See, however, more recently, StGH 2020/097, of 10 May 2021, in which the State Court repealed the prohibition regarding the adoption of step-children by a same-sex partner. In Austria, it had been the Constitutional Court primarily that had opened the path towards same-sex marriage by previously repealing provisions on the adoption of children by same-sex couples and artificial insemination for lesbian couples, even though the Court had in former years declared the legal distinction between marriage (for heterosexual couples) and registered partnership (for same-sex couples) constitutional.

<sup>95</sup> The State Court held in StGH 2018/154: “While it was just a small step for the Austrian Constitutional Court in its aforementioned decision to grant same-sex couples a constitutional claim to marriage, such a decision would presently not be compatible, for the State Court, with the appropriate restraint towards the law-maker and the social discourse”. Similarly, the State Court stressed in StGH 2020/097 para 2.7 that, in a democratic state governed by the rule of law and the separation of powers the law-

#### 4. Conclusions

The Austrian Federal Constitution, constitutional case law and academic doctrine have clearly influenced the Constitution of Liechtenstein in 1921 as well as today's Constitution. Having had close ties to Austrian law and legal traditions during the Austrian and Austro-Hungarian monarchy, Liechtenstein moved closer to Switzerland after the end of the First World War, while it shrank from maintaining its previous legal dependence on Austrian bureaucracy, courts and jurisprudence. Still, however, Austrian influences are visible in the Constitution of Liechtenstein, especially those borrowed from the Austrian Federal Constitutional Act enacted just one year earlier. Most important of these is the establishment of a specialized Constitutional Court which, however, received an individual design that partly differs from that of the Austrian Constitutional Court. Even though later constitutional amendments were not directly transplanted from the Austrian Federal Constitutional Act or its own subsequent amendments, the congruence between the two constitutions increased due to other reasons: both countries are parties to the ECHR (and most of its additional protocols) and belong to the EEA<sup>96</sup>.

As a consequence, the State Court, like the ECtHR and the Austrian Constitutional Court, interprets fundamental rights dynamically. The State Court also frequently cites Austrian legal precedents, in particular decisions of the Austrian Constitutional Court, which are, in the vast majority of cases, quoted in order to confirm or even inspire the State Court's decisions. Only in fewer cases, the State Court explicitly declared not to follow the Austrian Constitutional Court, due to differing legal backgrounds. The use of foreign precedents by the constitutional judges is clearly facilitated by the possibility to appoint foreign legal experts as judges.

From the perspective of the Austrian Federal Constitutional Act, no other constitution in the world has borrowed so much from it as the

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maker was primarily responsible to regulate family relations in a non-discriminatory way.

<sup>96</sup> See, on Liechtenstein's membership to the EEA, most recently, G. Baur, *Symposium: Liechtenstein and the EEA: EEA Law as Supplementary Constitutional Law*, in *IACL-AICD Blog*, 09 December 2021, <https://blog-iacl-aicd.org/centenary-constitution-liechtenstein/2021/12/9/liechtenstein-and-the-eea-eea-law-as-supplementary-constitutional-law-ncy4m>; G. Baur, *Dynamische Rechtsübernahme im EWR und der durch die Landesverfassung vorgegebene Rahmen*, in H. Hoch, C. Neier, P.M. Schiess Rütimann (Eds), *100 Jahre liechtensteinische Verfassung. Funktionen, Entwicklung und Verhältnis zu Europa*, Gamprin-Bendern, 2021, 315 ff; H. Hoch, "Grundprinzipien und Kerngehalte der Grundrechte der Landesverfassung". *Der EWR-Vorbehalt des Staatsgerichtshofes als materielle Verfassungsänderungsschranke*, in H. Hoch, C. Neier, P.M. Schiess Rütimann (Eds), *100 Jahre liechtensteinische Verfassung. Funktionen, Entwicklung und Verhältnis zu Europa*, Gamprin-Bendern, 2021, 51 (51 ff); B. Hammermann, *Mehrebenen im Grundrechtsschutz – die liechtensteinische Verfassung und der EWR*, in H. Hoch, C. Neier, P.M. Schiess Rütimann (Eds), *100 Jahre liechtensteinische Verfassung. Funktionen, Entwicklung und Verhältnis zu Europa*, Gamprin-Bendern, 2021, 291 (291 ff).

Constitution of Liechtenstein<sup>97</sup>, and no other constitutional court quotes so much Austrian constitutional case law as the State Court. Still, the Constitution of Liechtenstein is neither a copy of the Austrian Federal Constitution nor an amalgamation of the Austrian and the Swiss Federal Constitution. Not only do Liechtenstein's own constitutional traditions go far back into the 19<sup>th</sup> century, but also the constitutional evolution over the past century – above all the reform of 2003 – are token of autochthonous developments in the highly specific context of a microstate and monarchy.

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<sup>97</sup> A. Gamper, *Constitutional Borrowing from Austria? Einflüsse des B-VG auf ausländische Verfassungen*, in 75 ZöR 1, 2020, 122 ff.