

I.

## GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

### I.I – International catalogues of human rights (ECHR, UDHR and ICCPR)

- In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?

The constitutional position of international treaties protecting human rights is not entirely clear. On one hand, Article 104(2) of the Constitution and Article 22 of the Law on the Constitutional Court (Gesetz über den Staatsgerichtshof; StGHG) stipulate that the Constitutional Court may subject international treaties to an assessment of their constitutionality, which suggests that international treaties enjoy a rank below the Constitution. On the other hand, Article 15 StGHG holds that applicants may submit an individual complaint on account of violations of their constitutional rights as well as of their rights as inscribed in international treaties. This suggests that rights under international treaties enjoy constitutional rank, since they may be invoked before the Constitutional Court. According to the Constitutional Court, the ECHR factually enjoys constitutional rank, that is a legal force akin to the Constitution (StGH 2005/089, § 4). In the most recent article on the topic, Patricia Schiess Rütimann equally argues that there are strong arguments that the ECHR enjoys constitutional rank (Patricia Schiess Rütimann, Die Freiheiten des liechtensteinischen Gesetzgebers beim Einfügen der EMRK in die nationale Rechtsordnung, in: Liechtensteinische Juristenzeitung, 3/2018, p. 145).

- What mechanism is used to invoke the international treaties in national court decision-making?
- Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

In Liechtenstein, treaties under international law generally enjoy direct effect (Mark Villiger, Quellen der Grundrechte: Landesrechtlicher und völkerrechtlicher Grundrechtsschutz, in: Kley/Vallender, Grundrechtspraxis in Liechtenstein, Schaan 2012, p. 39), though in practice, parliament must approve all treaties (Peter Bussjäger, Art. 8 LV, § 45 in: Liechtenstein-Institut (Hrsg.): Kommentar zur liechtensteinischen Verfassung. Online-Kommentar, BERN 2016, [www.verfassung.li](http://www.verfassung.li) [version of 31 August 2015]). This view was confirmed several times by the Constitutional Court, most recently in its judgment StGH 2013/196, § 2.2.1. As a result, applicants may directly invoke a breach of their fundamental rights under, among others, the ECHR and the ICCPR under Article 15 StGHG. The Constitutional Court, in turn, refers directly to the interpretation of the tribunals which are responsible for the interpretation of these fundamental rights, such as the ECtHR.

### I.II – Supranational catalogues of human rights (the Charter)

- Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by “radiating” through the national catalogues (a substantive point of reference in other states)?

- Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogue in your country by general courts, or as a source for judicial law-making?
- Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is conditioned by making a request for preliminary ruling with the Court of Justice of the EU?

Liechtenstein is not a member of the EU and does not apply the Charter or the case law of the Court of Justice of the European Union. However, Liechtenstein is a member of the Schengen Area and therefore assesses, for instance, whether other Schengen states which asylum seekers would be expelled to comply with their obligations under the Dublin III Regulation, that is adherence to the Charter among other legal instruments (StGH 2017/062, § 2.2).

### **I.III – National human rights catalogues**

- Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?

In Liechtenstein, a catalogue of human rights forms part of the Constitution (Landesverfassung; LV) since the inception of the current Constitution in 1921. The catalogue of human rights constitutes the fourth part of the Constitution, being inscribed in Article 27bis to Article 43 of the Constitution. Each Article denominates one or several fundamental rights.

- What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?

Historically, and in particular before the conclusion of a customs treaty with Switzerland in 1923, Liechtenstein law was inspired by Austrian law. However, the Constitution of 1862 included a symbolic catalogue of human rights and was enacted five years before the catalogue of human rights in Austria (Bussjäger/Langer, Einführende Bemerkungen zum IV. Hauptstück, § 7 f. in: Liechtenstein-Institut (Hrsg.): Kommentar zur liechtensteinischen Verfassung. Online-Kommentar, BERN 2016, [www.verfassung.li](http://www.verfassung.li) [version of 22 July 2019]). What is more, the relevant political forces in Austria could not agree upon a modern catalogue of human rights with the inception of their Federal Constitutional Act (Bundes-Verfassungsgesetz; B-VG). Therefore, the Liechtenstein catalogue of human rights of 1921 did not explicitly draw upon other legislation. It added the freedom of establishment (Article 28 LV), political rights for Liechtenstein citizens (Article 29 LV), the equal access to office for all citizens (Article 31(1) LV), personal liberty, the immunity of the home and the inviolability of letters and documents (Article 32(1) LV), free commerce and trade (Article 36 LV), freedom of religion and conscience (Articles 37 to 39 LV), the freedom of expression (Article 40 LV) as well as the right of free association and assembly (Article 41 LV) to the existing catalogue (Bussjäger/Langer, *ibid.*, § 10) to the existing catalogue of human rights.

- What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?

Since the inception of the Constitution in 1921, a few rights were added. In 1971, it was clarified that the term “citizens” included both genders. In 1984, women gained the right to vote. And in 2005, the protection of human dignity, the prohibition of inhuman or degrading treatment, the right to life and the prohibition of the death penalty were added to the catalogue (Bussjäger/Langer, *ibid.*, §§ 12 ff.).

Fundamental rights may be added, modified or removed by means of a constitutional amendment. To amend the constitution, a unanimous vote by Parliament or two subsequent votes with a qualified majority of three fourths of all present Members of Parliament (Article 112(2) LV) is required. Either Government, Parliament itself or 1,500 citizens eligible to vote may initiate such a procedure (Article 112(2) in conjunction with Article 64 LV). In case of a popular initiative by at least 1,500 citizens, a referendum takes place in case Parliament votes against adopting said initiative (Article 85(2) in conjunction with Article 82(2) Law on political rights of the people [Volksrechtgesetz; VRG]).

#### **I.IV – The mutual relationship between different catalogues of human rights**

- Can you give examples from the case law of your court related to the use of any of the international catalogues?

The Liechtenstein Constitutional Court regularly refers to the jurisprudence of the ECtHR for the interpretation of fundamental rights. In its view, the ECHR enjoys constitutional rank, which means that it can draw upon the interpretation of the ECtHR for the interpretation of fundamental rights enshrined in the Constitution. The Constitutional Court feels bound by the interpretation of the ECtHR, so that the domestic fundamental rights are interpreted at least as extensively as the fundamental rights of the ECHR by the ECtHR.

Out of all international catalogues, only the ECHR is regularly consulted by the Constitutional Court. Only in one case, for example, the ICCPR was considered (Hoch, *Meinungsfreiheit*, in: Kley/Vallender, *Grundrechtspraxis in Liechtenstein*, Schaan 2012, p. 197 f., footnote 11; see StGH 1999/036). Nonetheless, the Constitutional Court held that decisions by the UN Human Rights Committee are factually binding, so that it can also draw upon these verdicts (StGH 2016/073, § 2.5). According to Article 15(2) StGHG, applicants may invoke the ECHR, the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination, CEDAW, the United Nations Convention against Torture (UNCAT) and the Convention on the Rights of the Child (CRC). The Constitutional Court left it explicitly open whether applicants may invoke further international catalogues (StGH 2016/024, § 3.1).

- Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?
- Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)

The Constitutional Court has not explicitly established a hierarchy between the different catalogues of human rights. Rather, it takes the interpretation which is most beneficial for the respective applicant in case various catalogues of human rights are applicable.

## II. – SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

### II.I – Right to life

- What is the original wording of the provision protecting this right in your national catalogue?

Article 27ter(1) LV: „Jeder Mensch hat das Recht auf Leben.“ / „Every person shall have the right to life.“

- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The formulation of the right was adopted in 2005 from Switzerland (Bussjäger, *Der Schutz der Menschenwürde und des Rechts auf Leben*, in: Kley/Vallender, *Grundrechtspraxis in Liechtenstein*, Schaan 2012, p. 125). The Constitutional Court has not considered the right to life in more detail yet (Bussjäger, *ibid.*, p. 126). In particular, it has not had yet the opportunity to establish how and under what conditions the right to life may be restricted.

### II.II – Freedom of expression

- What is the original wording of the provision protecting this right in your national catalogue?

Article 40 LV: „Jedermann hat das Recht, durch Wort, Schrift, Druck oder bildliche Darstellung innerhalb der Schranken des Gesetzes und der Sittlichkeit seine Meinung frei zu äussern und seine Gedanken mitzuteilen; eine Zensur darf nur öffentlichen Aufführungen und Schaustellungen gegenüber stattfinden.“ / „All persons shall have the right to freely express their opinion and to communicate their ideas verbally, in writing, in print or with images, within the limits of the law and morality; censorship may only be exercised in respect of public performances and exhibitions.“

- Is it possible to restrict the right? If so, how and under what conditions?

The freedom of expression may be restricted on the basis of law, a public interest, the proportionality of the measure and the inviolability of the substance of the right. Despite the wording of the provision, censorship would violate the substance of this freedom (Hoch, *Meinungsfreiheit*, in: Kley/Vallender, *Grundrechtspraxis in Liechtenstein*, Schaan 2012, p. 203 ff.)

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

In its leading case StGH 1994/008, the Constitutional Court held that uninhibited information and free public debate represent the “salt of politics”, in particular in a small state whose constitution assigns a central role to the political rights of citizens.

The Constitutional Court considered the freedom of expression recently concerning a hospital doctor who was classified as a ‘whistle-blower’. He had been summarily dismissed after raising concerns that active euthanasia was being carried out unlawfully. As such, the dismissal affected his freedom of expression. Therefore, the relevant contractual norms had to be interpreted in light of the freedom of expression. The Constitutional Court found that an individual who raises concerns which involve sensitive information is under the duty and responsibility that flows from the freedom of expression. Therefore the validity and reliability of such information must be considered carefully (StGH 2018/074 = EuGRZ 2018/21-23, p. 673 ff.).

No claim to State benefits such as subsidies may be inferred from the principle of freedom of the press. Thus no right to State support for the press derives from the freedom of expression. Equality before the law and prohibition of arbitrary treatment, juxtaposed with freedom of the press, have a special significance that follows from the State's duty of impartiality. They generate a right to equal treatment in respect of media competition. It is within the legislator's independent discretion to decide whether and in what way there should be support for the press. Consideration of frequency of publication is an objectively justifiable criterion (StGH 2008/043).

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The Constitutional Court's interpretation of the freedom of expression is in line with the interpretation of the ECtHR (see already StGH 1994/018 and StGH 1994/008).

### **II.III – Right to privacy/right to respect for private life/right to private life**

- What is the original wording of the provision protecting this right in your national catalogue?

Article 32(1) LV: “Die Freiheit der Person, das Hausrecht und das Brief- und Schriftengeheimnis sind gewährleistet.“ / „Personal liberty, the immunity of the home and the inviolability of letters and documents shall be guaranteed.”

Article 32(2) LV: “Ausser den vom Gesetze bestimmten Fällen und der durch das Gesetz bestimmten Art und Weise darf weder jemand verhaftet oder in Haft behalten, noch eine Hausdurchsuchung oder Durchsuchung von Personen, Briefen oder Schriften oder eine Beschlagnahme von Briefen oder Schriften vorgenommen werden.“ / „Except in the cases specified by law and in the manner prescribed by law, no person may be arrested or kept in custody, no houses, persons, letters or documents may be searched, and no letters or documents may be seized.”

- Is it possible to restrict the right? If so, how and under what conditions?

The right to privacy resp. private life may be restricted on the basis of law, a public interest, the proportionality of the measure and the inviolability of the substance of the right (Beck/Kley, Freiheit der Person, Hausrecht sowie Brief- und Schriftengeheimnis, in: Kley/Vallender, Grundrechtspraxis in Liechtenstein, Schaan 2012, p. 142).

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

Administrative assistance in tax matters is associated with weighty questions of interpretation. It not only concerns the administrative procedure of information exchange, but directly or indirectly impinges on the legal status of individuals. If a request for mutual administrative assistance, at least with reference to certain parts of the request, results in genuine retroactivity where completed operations and acts are concerned, it must be proportionate. A retroactivity of ten-years is manifestly incompatible with the requirement of restraint as to duration. However, since matters of administrative assistance concern procedural law, a more flexible handling of retroactivity is expedient than when dealing with substantive law.

The prohibition of retroactivity is a corollary to the requirement of the predictability of law and has a close relationship with the principle of good faith. In that regard, a retroactive effect appears reasonable to the extent that a change in the legal situation was announced by the public authorities, or to the time when it was foreseeable for the persons concerned and them being able to react accordingly (StGH 2013/011).

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The Constitutional Court's interpretation of the right to privacy resp. right to private life is in line with the interpretation of the ECtHR (Beck/Kley, *ibid.*, p. 133).

## II.IV – Freedom of religion

- What is the original wording of the provision protecting this right in your national catalogue?

Article 37(1) LV: „Die Glaubens- und Gewissensfreiheit ist jedermann gewährleistet.“ / „Freedom of religion and conscience shall be guaranteed for all.“

Article 37(2) LV: „Die römisch-katholische Kirche ist die Landeskirche und genießt als solche den vollen Schutz des Staates; anderen Konfessionen ist die Betätigung ihres Bekenntnisses und die Abhaltung ihres Gottesdienstes innerhalb der Schranken der Sittlichkeit und der öffentlichen Ordnung gewährleistet.“ / „The Roman Catholic Church is the National Church and as such shall enjoy the full protection of the State; other denominations shall be entitled to practice their creeds and to hold religious services within the limits of morality and public order.“

Article 38 LV: „Das Eigentum und alle anderen Vermögensrechte der Religionsgesellschaften und religiösen Vereine an ihren für Kultus-, Unterrichts- und Wohltätigkeitszwecke bestimmten Anstalten, Stiftungen und sonstigen Vermögenheiten sind gewährleistet. Die Verwaltung des Kirchengutes in den Kirchengemeinden wird durch ein besonderes Gesetz geregelt; vor dessen Erlassung ist das Einvernehmen mit der kirchlichen Behörde zu pflegen.“ / „Ownership and all other proprietary rights of religious communities and associations in respect of their institutes, foundations and other possessions devoted to worship, instruction, and charity shall be guaranteed. The administration of church property in the parishes shall be regulated by a specific law; the agreement of the church authorities shall be sought before the law is enacted.“

Article 39 LV: “Der Genuss der staatsbürgerlichen und politischen Rechte ist vom Religionsbekenntnisse unabhängig; den staatsbürgerlichen Pflichten darf durch denselben kein Abbruch geschehen.“ / “The enjoyment of civil and political rights shall be independent of religious creed; religious creed may not be detrimental to civil obligations.”

- Is it possible to restrict the right? If so, how and under what conditions?

The freedom of religion may be restricted on the basis of law, a public interest, the proportionality of the measure and the inviolability of the substance of the right (Wille, Glaubens-, Gewissens- und Kultusfreiheit, in: Kley/Vallender, Grundrechtspraxis in Liechtenstein, Schaan 2012, p. 189).

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

Where sex education in school is concerned, notwithstanding a possible conflict of loyalty, the public interest of the state’s educational mission outweighs the parents’ right to religious instruction of their children which springs from the parents’ freedom of religion. Freedom of belief and conscience can be given appropriate weight by observing certain guidelines and limits in the sex education course at school (StGH 2014/039).

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The Constitutional Court’s interpretation of the freedom of religion is mostly in line with the interpretation of the ECtHR (Wille, Glaubens-, Gewissens- und Kultusfreiheit, *ibid.*, p. 177 f.).

## **II.V – Prohibition of discrimination**

- What is the original wording of the provision protecting this right in your national catalogue?

Article 31(1) LV: “Alle Landesangehörigen sind vor dem Gesetze gleich. Die öffentlichen Ämter sind ihnen unter Einhaltung der gesetzlichen Bestimmungen gleich zugänglich.“ / „All Liechtenstein citizens shall be equal before the law. Public offices shall be equally open to them, subject to observance of the legal provisions.”

Article 31(2) LV: “Mann und Frau sind gleichberechtigt.“ / “Men and women shall enjoy equal rights.”

Article 31(3) LV: “Die Rechte der Ausländer werden zunächst durch die Staatsverträge und in Ermangelung solcher durch das Gegenrecht bestimmt.“ / „The rights of foreigners shall be determined in the first instance by international treaties, or, in their absence, by reciprocity.“

- Is it possible to restrict the right? If so, how and under what conditions?

It is not possible to restrict the prohibition of discrimination. In the event that two comparable cases can be objectively differentiated, discrimination is justified. In case two comparable cases cannot be objectively differentiated, discrimination is always unjustified (Hoch, Einheitliche Eingriffskriterien für alle Grundrechte?, in: Liechtenstein-Institut, Beiträge zum liechtensteinischen Recht aus nationaler und internationaler Perspektive: Festschrift zum 70. Geburtstag von Herbert Wille, Schaan 2014, p. 197).

Notably, Article 31(3) LV has practically lost any substantive meaning after Liechtenstein acceded to the ECHR (StGH 2005/089, § 6).

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The prohibition of discrimination with regard to specific laws can be equated with the prohibition of arbitrary treatment. In contrast, the prohibition of discrimination with regard to the application of specific laws requires serious and objective reasons for a diverging treatment, so that there must be objective differences which are significant and able to justify the diverging treatment (Vogt, *Das Willkürverbot und der Gleichheitsgrundsatz in der Rechtsprechung des Liechtensteinischen Staatsgerichtshofes*, Schaan 2008, p. 216).

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

In comparison to the Liechtenstein Constitution, the ECHR does not contain a free-standing, general prohibition of discrimination. Under the ECHR, discrimination must relate to one of the fundamental rights guaranteed by the ECHR or to one of its additional protocols (Kley/Vogt, *Rechtsgleichheit und Grundsatz von Treu und Glauben*, in: Kley/Vallender, *Grundrechtspraxis in Liechtenstein*, Schaan 2012, p. 253 f.).

## II.VI – Right to liberty

- What is the original wording of the provision protecting this right in your national catalogue?

Article 32(1) LV: “Die Freiheit der Person, das Hausrecht und das Brief- und Schriftengeheimnis sind gewährleistet.“ / „Personal liberty, the immunity of the home and the inviolability of letters and documents shall be guaranteed.“

Article 32(2) LV: “Ausser den vom Gesetze bestimmten Fällen und der durch das Gesetz bestimmten Art und Weise darf weder jemand verhaftet oder in Haft behalten, noch eine Hausdurchsuchung oder Durchsuchung von Personen, Briefen oder Schriften oder eine Beschlagnahme von Briefen oder Schriften vorgenommen werden.“ / „Except in the cases specified by law and in the manner prescribed by law, no person may be arrested or kept in custody, no houses, persons, letters or documents may be searched, and no letters or documents may be seized.“

Article 32(3) LV: “Ungesetzlich oder erwiesenermassen unschuldig Verhaftete und unschuldig Verurteilte haben Anspruch auf volle vom Staate zu leistende, gerichtlich zu bestimmende Entschädigung. Ob und inwieweit dem Staate ein Rückgriffsrecht gegen Dritte zusteht, bestimmen die Gesetze.“ / „Persons arrested unlawfully and persons arrested or convicted and shown to be innocent shall be entitled to full compensation from the State as determined by the Courts. Whether and to what extent the State has a right of recourse against third parties in such cases shall be determined by the laws.“

- Is it possible to restrict the right? If so, how and under what conditions?



The right to liberty may be restricted on the basis of law, a public interest, the proportionality of the measure and the inviolability of the substance of the right (Beck/Kley, Freiheit der Person, Hausrecht sowie Brief- und Schriftengeheimnis, in: Kley/Vallender, Grundrechtspraxis in Liechtenstein, Schaan 2012, p. 142).

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Court of First Instance dismissed the application for conditional release submitted on the basis of § 46 of the Penal Code (StGB) by a professional trustee convicted of misappropriation, stating grounds of general deterrence, having regard to the special position of trust held by professional trustees in Liechtenstein. The Court of Appeal upheld this decision. The Constitutional Court allowed the individual appeal brought against the decision for infringement of the principle proscribing abuse of rights, as there had been no specific analysis of the case in point. General and outright exclusion of an offence or a group of offenders, without examination on each occasion of the actual case in point, is not compatible with the legislation governing conditional release, and would ultimately result in rendering this legal institution devoid of substance (StGH 2009/161).

The objective scope of the right to liberty also extends to the issuance of an arrest warrant. Since the issuance of an arrest warrant entails a grave encroachment on individual freedom, relatively stringent requirements must be laid down as to the legal foundation. Likewise, processes of reasoning by analogy are also to be restrictively applied, and an extensive interpretation of the letter of the law is inappropriate. Mere failure to appear at the concluding hearing does not constitute flight, even without an abode in the national territory, nor does it substantiate a risk of the offence of absconding which would have warranted the issuance of an international arrest warrant (StGH 2009/015+016).

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The Constitutional Court's interpretation of the right to liberty is in line with the interpretation of the ECtHR (Beck/Kley, *ibid.*, p. 133).