LUXEMBOURG

An Introduction to the Institutions of the Grand-Duchy of Luxembourg

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Historic Background

Luxembourg's Constitution was adopted on 17 October 1868. Even though an independent Duchy of Luxembourg existed from the tenth to the fifteenth centuries, the modern State of Luxembourg has its origins in the Treaty of Vienna of 1815, which attempted to reorganize Europe after the Napoleonic wars.

Like Belgium, Luxembourg was at first incorporated within the Netherlands and subject to the Dutch *Grondwet* of 24 August 1815. However, the regime was very unpopular and when the Belgian Revolution broke out in 1830, the people of Luxembourg participated. Thus from 1830 to 1839 most of the territory of the Duchy of Luxembourg became a part of Belgium, with the exception of the city of Luxembourg which remained loyal to the Dutch king.

Luxembourg formally gained its independence in the Treaty of London of 19 April 1839, but even after this event the Fortress of Luxembourg remained guarded by a garrison of Prussian troops until 1867 and a personal union was maintained between the Netherlands and Luxembourg, automatically making the King of the Netherlands Grand-Duke of Luxembourg until 1890.

In the first twenty years of its independence, Luxembourg had no fewer than four different Constitutions. The first Constitution was conferred upon the country by the King-Grand-Duke in 1841, but in 1848, it was replaced by a more liberal and democratic Constitution, which bore a close resemblance to the Belgian Constitution of 1831. This Constitution was again repealed by the Grand-Duke in 1856 and replaced by an autocratic regime.

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The current Constitution was finally adopted in 1868 only a year after the treaty of London of 1867 imposed on the Grand-Duchy of Luxembourg an obligation to dismantle the Fortress of Luxembourg totally and remain 'perpetually neutral'. Luxembourg's Constitution of 1868 has many similarities with the Belgian Constitution of 1831. Indeed, many of the provisions of the Constitution of October 1868 were taken from the Constitution of 1848, which had itself been strongly influenced by the Belgian Constitution. Even though one could point to many differences between the two texts, and even though certain provisions of the Luxembourg and Belgian Constitution are interpreted differently, Luxembourg and Belgium share the same constitutional traditions.

Since 1868, Luxembourg's Constitution has been very stable and the current Constitution remains very close to the original text of 1868. In 175 years, there have been only eight[1] laws amending the Constitution. The first and most important of amendments to the Constitution was adopted in 1919 and introduced a more democratic regime. Until 1919, the constitutional principle, a residue from the 1856 Constitution, was that the powers of the State were vested in the Grand-Duke and Parliament only had to be consulted for matters explicitly stated in the Constitution. Since 1919, the principle has been inverted and Article 32 of the Constitution now clearly states the Grand-Duke has only those powers that are given to him by the Constitution: 'The sovereign power resides in the Nation. The Grand-Duke exercises it in compliance with this Constitution and the laws of the country. He has no powers other than those formally vested in him by the Constitution and the special laws passed pursuant to the Constitution, without prejudice to art. 3 of this Constitution.' Other important changes to the Constitution adopted in 1919 include the introduction of universal suffrage, the attribution of voting rights to women and the introduction of a mechanism to consult voters by means of a consultative referendum.

The second constitutional revision took place after the Second World War. In 1948, the Constitutional Assembly deleted all references to the 'perpetual neutrality' imposed on Luxembourg by the 1867 Treaty. Furthermore, the list of fundamental rights was supplemented by the introduction of several economic rights available not only to Luxembourgers but also to legal foreign residents (Articles 11, 23 and 29 of the Constitution).

The 1956 revision was undertaken to clarify the constitutional provisions on the conduct of foreign affairs. Article 37 of the Constitution was amended to state that international treaties made by the Grand-Duke 'shall not come into effect until they have been sanctioned by law and published in the manner laid down for the publication of laws'. A new article 49*bis* was inserted to allow a temporary transferral of the exercise of constitutional powers to international organizations: 'The exercise of the powers reserved by the Constitution to the legislative, executive and judiciary powers may be temporarily vested by treaties in institutions governed

[1] Changes to the Constitution were adopted in 1919, 1948, 1956, 1972, 1979, 1983, 1988, 1989 and 1994.

by international law.' Such treaties must however be ratified by Parliament with a two-thirds majority of its members.

Further constitutional amendments were adopted to lower the age requirement for voters to 18 years (1972), to modify the oath of the Grand-Duke (1983), to limit the total number of members of parliament to sixty (1988), to introduce a new article 83*bis* on the Council of State (1989) and to enable European citizens to vote in local elections (1993).

The Luxembourg Political System

In spite of the many amendments adopted over the years, the Constitution of the Grand-Duchy of Luxembourg remains an old-fashioned text. Indeed, a casual reader could be misled into believing that the Grand-Duke is an authoritarian monarch when reading that 'the Grand-Duke alone exercises the executive powers' (Article 33) and that he may apparently at will 'appoint and dismiss the members of the Government' (Article 77) or 'dissolve the Chamber' (Article 74). The institutional reality of course is very different and Luxembourg today is a true democracy: 'The Grand-Duchy of Luxembourg is ruled by a system of parliamentary democracy' (Article 51) where 'the sovereign power resides in the Nation'.

The Grand-Duchy of Luxembourg is a representative State where the daily exercise of sovereign powers is vested by the Nation in the Chamber of Deputies, elected every five years by universal suffrage. The democratic character of the Luxembourgian State is also revealed in the possibility to consulting voters by means of a referendum.[2] The availability of referenda in fact runs counter to the representative character of Luxembourg's political system set out in Article 51(1) of the Constitution. However, it is generally considered that since the results of a referendum are not binding upon Parliament,[3] the final decision making power is always vested in the elected representatives. At any rate, there have only been three national referenda since 1919, the most recent of which was organized in 1937, and the law on referenda announced in Article 51(7) of the Constitution has not as yet been adopted. The situation is different on the local level: the possibility of holding referenda was introduced by the 1988 Communal Law[4] and there have been several local referenda since.

According to Luxembourg's Constitution, legislative power is shared between

[2] The electors may be requested to pronounce themselves by way of a referendum and under conditions to be determined by law (Article 51(7) of the Constitution). See: Alex Bonn, *La Constitution oubliée*, Imprimerie Centrale, 1968.

[3] While Articles 35 and 36 of the Communal Law clearly state that local referendums only have a consultative character, Article 51 of the Constitution remains silent on this questions. Legal writers agree however that the results of a referendum are not binding upon Parliament.

[4] Articles 35 and 36 of the Communal Law of 13 December 1988 (*Mém.* A. 1988, p. 1221).

Parliament (the Chamber of Deputies) and the Grand-Duke. Draft laws are formally brought into Parliament by the Government[5] in the name and with the consent of the Grand-Duke and after the adoption of the text by Parliament, the law will not exist and does not come into force until it has been sanctioned and promulgated by the Grand-Duke.

According to Article 34 of the Constitution 'the Grand-Duke sanctions and promulgates the laws. He makes his resolve known within three months of the vote of the Chamber.' The Constitution remains silent as to what happens if the Grand-Duke does not sign a law within three months, but it has traditionally been considered that in such an event the law would cease to exist and according to Luxembourg's main textbook on public law, Article 34 of the Constitution gives the Grand-Duke an 'absolute veto right'[6] against laws already passed by Parliament. This interpretation of the Constitution is of course in total contradiction with the democratic reforms adopted in 1919 and indeed, the veto right, if it ever existed, has not been used by any Grand-Duke since 1919.

The Grand-Duke is also the head of the executive branch, but here again his powers are less important than it seems at first. Article 33 of the Constitution plainly states that 'The Grand-Duke alone exercises the executive power' but this article must be read in conjunction with Article 45 of the Constitution: 'All provisions of the Grand-Duke require the countersignature of a responsible member of the Government.' In practice, the executive powers are today fully exercised by the Government and the Grand-Duke only retains formal functions.

Luxembourg has a monocameral Parliament, the Chamber of Deputies, with sixty members, elected every five years. Plans to establish a traditional bicameral system were rejected by the authors of Luxembourg's Constitution because such a system seemed to be disproportional for a small country like Luxembourg. In order to compensate for the absence of an upper house, the authors of the Constitution established an original system in which each piece of legislation has to be voted on by the Chamber of Deputies twice, with an interval of at least three months between both votes. The rule in Article 59 of the Constitution is that 'the laws are submitted to a second vote unless the Chamber decides otherwise, in agreement with the Council of State in a public sitting. There shall be an interval of at least three months between the two votes.' The second vote is commonly qualified as the 'second constitutional vote'.

In practice the rule has become the exception, since the vast majority of laws are exempt from the second constitutional vote. The Chamber of Deputies systematically requests the exemption immediately after the first vote and the Council of State has adopted a policy of exempting most legislation from the second vote and

[5] Individual members of Parliament are of course also entitled to bring in draft legislation or to propose amendments to government projects.

[6] Pierre Majerus, *L'Etat luxembourgeois*, Imprimerie Editpress, Esch-sur-Alzette, 1983; see also Marc Thewes, 'A propos de l'impossibilité de régner du Roi des belges', *Luxemburger Wort*, 6 April 1990, p. 3.

insisting on the second vote only in very serious cases. Most frequently, problems that could have prevented the Council of State from granting exemption from the second vote are removed from the text during the preliminary procedure, since every draft law must be submitted to the Council of State before it can be brought in before Parliament.[7]

It should be stressed that the Council of State does not have a true power to veto legislative instruments, a possibility that would very difficult to reconcile with the fact that the Council of State is not a democratically elected institution.[8] The Council of State can only postpone the adoption of a law by three months and thus impose a delay for reflection by Parliament. Nevertheless, the way in which Luxembourg's Council of State replaces a second house of Parliament is a system that is clearly specific to Luxembourg.

Even though the law making procedure in Luxembourg was already quite intricate because of the intervention of the Council of State, it was further complicated by a Statute of 1924, which establishes six professional chambers. The members of those professional bodies are elected every five years according to a procedure which closely follows the lines of the general election procedure. While the main mission of the professional chambers is to defend the interests of their trade or profession, the law also requires that whenever a trade or profession is directly affected by a draft legislation or regulation, the draft text must be submitted to the corresponding chamber for an opinion.

However, the opinions of the chambers are not binding. Furthermore, it should be note that while the legislation dictates that the opinion be requested, there is no provision in the law requesting the legislator to suspend the examination of the draft until the opinion of the professional chamber is ready. The opinions clearly have a strictly consultative nature. Because of their participation in the law making process, the right to participate in the professional elections was long reserved to Luxembourg nationals. The law was amended in 1993 under pressure from the European Commission to give voting rights to citizens from European Union Member States.

[7] 'Aucun projet ni aucune proposition de loi ne sont présentés à la Chambre des Députés et, sauf le cas d'urgence à apprécier par le Grand-Duc, aucun projet de règlement d'administration ou de police générales ni aucun projet de règlement ou d'arrêté nécessaire pour l'exécution des traités, ne sont soumis au Grand-Duc qu'après que le Conseil d'Etat ait été entendu en son avis' (*Loi du 8 février 1961 portant organisation du Conseil d'Etat*, Article 27).

[8] The members of the Council of State are named by the Grand-Duke from among candidates proposed either by Parliament, by Government or by the Council of State itself.

Reform Projects

It has already been stressed that Luxembourg's institutional system has been very stable over the last decades. Parliament is, however, currently examining several projects for reform, the most important of which is the proposed introduction of a Constitutional Court. A parliamentary committee on institutional reform has been established to discuss the issue of a Constitutional Court, but no agreement has been reached yet on the powers to be given to the Court.

Parliament is also discussing a government proposal on the reform of administrative courts drafted as a consequence of the *Procola Case* brought before the ECHR by an association of milk producers to protest against a ruling by which a subcommittee of the Council of State, sitting as supreme administrative judge, had rejected a appeal against an administrative decision on milk quotas. The complaint alleges that four of the five members of the Council of State sitting in the case had previously participated in the drafting of the Council of State's opinion on the Government regulation laying out the general principles concerning milk quotas and could therefore not be considered impartial judges. Even though the ECHR has not ruled on the case yet, the government draft proposes to separate the Council of State's legislative from its judicial functions.