

Liechtenstein

I. Brief Introduction to the Legal System of Liechtenstein

As Liechtenstein is a very small country and has always been greatly affected by Austrian history, both Liechtenstein's legal system and the organization of Liechtenstein's courts are heavily dependent on Austrian law. Nevertheless, Swiss law has also served as a role model for Liechtenstein's legal system. For example, Liechtenstein's company law, property law, and a large part of administrative law are based on Swiss law. Furthermore Liechtenstein, being part of the European Economic Area¹, must implement European Economic Area law.

Liechtenstein is a civil law country. The source of the law is statute, which is enacted by the parliament. In contrast to common law countries, court decisions made by one judge are not binding on other judges. Nevertheless, legal precedents are very important in Liechtenstein's legal system. Thus, lawyers and judges regularly refer to precedents. For the interpretation of a specific legal ruling, the relevant legal literature and case law of the jurisdiction upon which the legal ruling is based will also be taken into consideration by Liechtenstein lawyers and judges. In recent years the source of specific legal literature has begun to expand. For this reason, despite the fact that Liechtenstein is a very small country, various legal journals and specialist legal books are published in Liechtenstein. Nevertheless, the greater part of legal literature comes from abroad. It is interesting that Liechtenstein – despite being a civil law country – has the legal institution of the Anglo-American trust. Thus in cases involving such trusts, Liechtenstein lawyers have to be familiar with the trust laws of the common law system.

The Liechtenstein court system is based on three "instances:"² the District Court (first instance), the Superior Court (second instance), and the Supreme Court (final instance). All these courts are situated in Vaduz, the capital of Liechtenstein. In civil matters, proceedings before a district court are conducted by a single judge. In criminal matters it depends on the alleged crime: normally there is only one judge but for some serious crimes there are five judges, three of whom are lay assessors. The Superior and the Supreme Court always consist of five judges; three of them are lay assessors. Unlike other jurisdictions, Liechtenstein does not have a jury system. For this reason the judgment will be rendered by a judge or several judges.

¹ The European Economic Area is a 1994 agreement among the European Union, Iceland, Norway, and Liechtenstein which allows the three countries to participate in the EU market without becoming EU members.

² An instance is a level of a court proceeding: the District Court (first instance), the Superior Court (second instance), and the Supreme Court (final instance).

Although the Supreme Court is theoretically the final instance, in practice parties often try to challenge the Supreme Court's decision at the Constitutional Court. Disappointed parties may argue there that their constitutionally guaranteed rights have been violated and argue that for this reason the Supreme Court's judgment should be overruled by the Constitutional Court. Finally, as a member of the European Economic Area and the European Convention on Human Rights, an appeal is also possible to the EFTA Court or the European Court of Human Rights.

II. Liechtenstein's Anticorruption Law

Bribery and other forms of corruption regarding public authorities are regulated in chapter 22 of the Liechtenstein criminal code (hereinafter the "Criminal Code") under the title "The criminal breach of the official duty and related criminal acts." Forms of corruption other than bribery include, for example, the abuse of authority (§ 302 Criminal Code) and the acceptance of gifts by officials (§ 304 Criminal Code), by executive employees of a public enterprise (§ 305 Criminal Code), or by an expert who is engaged by the court for a specific court case or other proceeding (§ 306 Criminal Code).

Contrary to the regulation of public companies and authorities there are no explicit rules against bribery in the private sector. However, here bribery can be prosecuted as, for example, embezzlement (§ 153 Criminal Code) or misguidance causing a breach of contract or the termination of a contract (Article 4 Fair Trade Law).

Bribery of foreign officials

The criminalizing of the bribery of foreign officials was only introduced into Liechtenstein law in the year 2000. Although Liechtenstein is not an OECD or European Union member, in light of developments in neighbouring countries, the Liechtenstein government wanted to introduce regulations against the bribery of foreign officials into its criminal code as well. In this context it is interesting that the Liechtenstein criminal code is principally based upon the Austrian criminal code. However, as regards the bribery of foreign officials, Liechtenstein took Swiss law as a model for its regulation. The reason for this choice was the fact that in 2000 the Austrian regulation of the bribery of foreign officials (Austrian criminal code § 307) did not cover as much as its Swiss counterpart.³ The Liechtenstein legislature did not issue a completely new regulation; it only introduced the term "foreign state official" into the existing regulation in § 307 of the Liechtenstein criminal code.

Under Liechtenstein law, to bribe a foreign official means to offer, promise, or grant a benefit to a foreign official for the performance or non-performance of an official act contrary to the official's duties in favor of the offeror or a third party. The act is seen to be contrary to his duties even if such a decision lies within the range of the official's discretionary power. The

³ Parliamentary motion and record (Bericht und Antrag (BuA)) 2000/56, p. 74.

duty of an official is to base his decisions on factual and legal reasons only, not on preferential treatment or discrimination towards someone.⁴

The term “foreign official” is defined in § 74 of the Criminal Code as one who works for the legislature, administration, or judiciary of a foreign nation; carries out public functions for a foreign nation; works for an authority or a public enterprise of such a foreign nation; or is an official or representative of an international organization. In this regard, working for the “foreign nation” covers work across the entire public sector encompassing all divisions from the national to the municipal level.

An “official” is one who carries out an official function in the name of the foreign nation, municipality, or other public body. The term “authority” is meant to cover any public institution that performs tasks in the public interest. A “public enterprise” is any enterprise that is directly or indirectly controlled by a public authority. Control is defined for this purpose as the majority of subscribed capital or the majority of shares with voting rights is held by the public authority or if the authority is entitled to nominate the majority of the management board. Finally, the term “international organization” means all international organizations established by nations, governments, or other international organizations.⁵

Legal entities covered

The law allowing the prosecution of legal entities was introduced in 2011. Before 2011 only a person could be liable for crimes, even if the crime was committed in the name of, or for the benefit of, a legal entity.

Anti-bribery sanctions

The penalty for the bribery of a foreign official is imprisonment of up to two years. Until 2000 the Criminal Code only allowed for a penalty of up to one year. However, several reasons prompted the government to request an increase in the maximum possible penalty. One was the international trend for the increasingly severe punishment of those who bribe foreign officials. Another was the government’s desire for bribery to become a crime qualifying for mutual legal assistance regarding extradition, which was possible only for crimes with a maximum penalty of more than one year’s imprisonment.⁶ Instead of imprisonment, a fine can be levied. Pursuant to § 37 of the Criminal Code, a judge may impose a fine instead of imprisonment if the maximum punishment for the crime committed is not more than five years’ imprisonment and the accused is not sentenced to more than six months. The amount of the fine depends on the income of the person convicted.

Enforcement

⁴ Parliamentary motion and record (Bericht und Antrag (BuA)) 2000/56, p. 75.

⁵ Parliamentary motion and record (Bericht und Antrag (BuA)) 2000/56, p. 57.

⁶ Parliamentary motion and record (Bericht und Antrag (BuA)) 2000/56, p. 76.



Bribery is a so-called *ex officio* offence, which means it is up to the prosecutor to investigate and thereafter charge the alleged offender. Liechtenstein also has a specialized anti-corruption police unit charged to investigate and prosecute cases of corruption according to international standards.

Bribery as a predicate crime for money laundering

Section 165 of the Criminal Code makes bribery a predicate crime for money laundering. This was not the case until the year 2000 when, because of international attention, the Liechtenstein government introduced bribery as a predicate offence in § 165.⁷ To be convicted of money laundering, the offender must have carried out two different acts: he has to have carried out a so-called predicate offence, such as bribery, and he must have disposed of the proceeds by concealing the origin of the assets. The sanction is imprisonment of up to three years.

III. Assessment

Liechtenstein is not an OECD member and did not implement the OECD Convention. Liechtenstein joined the partial agreement established by GRECO and has implemented the United Nations Convention. Furthermore, Liechtenstein is a member of the IACA

From April 11-15, 2011, a GRECO evaluation team visited Liechtenstein. The evaluation team did not specifically examine the issue of prevention of bribery of foreign officials. Nevertheless, the evaluation brought forward some important points regarding bribery in general. The evaluation team came to the opinion that the fight against corruption was part of Liechtenstein's political agenda. This was based on the following reasons:⁸

- the formation of an anticorruption inter-agency coordination group in 2003;
- the establishment of a specialized anticorruption police unit in 2007;
- the ratification of the United Nations Convention; and
- continuous improvements in the arrangements for preventing money laundering and providing mutual legal assistance.

Nevertheless, the evaluation team also raised some concerns. First of all, the evaluation team was critical of the one-year statute of limitations for bribery. This is incorrect. Section 57 of the Criminal Code specifies that crimes with a penalty of at least one year's imprisonment and a maximum penalty of up to five years have a statute of limitations of five years, not one. The evaluation team said the maximum penalty for bribery, two years, is too low, believing this to have a negative impact on its deterrent effect.⁹

The evaluators criticized Liechtenstein's lack of a whistleblower protection law and suggested the enactment of such a law would encourage public sector employees to notify the

⁷ Parliamentary motion and record (Bericht und Antrag (BuA)) 2000/56, p. 29.

⁸ GRECO Evaluation Report on Liechtenstein, p. 54.

⁹ GRECO Evaluation Report on Liechtenstein, p. 22.

authorities of any suspicions of corruption. The law should include a hotline as well as special measures to protect whistleblowers from retaliation.¹⁰

Liechtenstein's specialized anticorruption police unit established to investigate and prosecute cases of corruption has only been brought cases of abuse of power and breach of official secrets. There have been no investigations, arrests, or convictions involving the offense of bribery of a foreign official.

Liechtenstein is not ranked by Transparency International on its 2012 Corruption Perceptions Index.

IV. Texts

A. The Liechtenstein Criminal Code.

https://www.gesetze.li/get_pdf.jsp?PDF=1988037.pdf

B. Parliamentary motion and record (Bericht und Antrag (BuA)) 2000/56.

<http://bua.gmg.biz/BuA/heft/drucken/druckenframe.jsp?von=1&bis=100&alles=true&buajahr=2000&buanummer=56>

C. GRECO Evaluation Report on Liechtenstein (Strasbourg, 21 October 2011)

[http://www.coe.int/t/dghl/monitoring/greco/news/News\(20121031\)Eval1&2Liechtenstein_en.asp](http://www.coe.int/t/dghl/monitoring/greco/news/News(20121031)Eval1&2Liechtenstein_en.asp)

¹⁰ GRECO Evaluation Report on Liechtenstein, p. 56.