Luxembourg: Parliament abolishes royal confirmation of laws†

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Law concerning royal assent—royal sanction of laws—royal accountability in a constitutional monarchy

A major constitutional reform took place in December 2008 in Luxembourg, a constitutional monarchy and founding member of the United Nations, NATO, and the European Union.1 After the head of state, the Grand Duke of Luxembourg, announced that he would refuse to approve a possible law on euthanasia that the democratically elected Parliament was about to adopt, the government and Parliament decided unanimously to abolish the royal assent to laws that had existed in the Luxembourg constitution since 1848.

1. The history of the Luxembourg royal assent

Luxembourg is an old monarchy and its Constitution was inspired by the Belgian constitution of 1831. The current Luxembourg Constitution dates back to 1868, although many provisions have been modified since then. It had provided, in Article 34.c that “The Grand Duke approves and promulgates the laws. He makes his decision known within a period of three months following the vote of Parliament.”

The royal sanction of laws is a typical royal prerogative, according to which the king (or, in the case of Luxembourg, the grand duke) approves any text adopted by Parliament. This sanction, or confirmation, of laws is given through the signature that the monarch affixes to the text after it has been adopted by Parliament. Without the royal signature, the text does not become law. By exercising the prerogative of sanction, the grand duke participates in the legislative branch of government. By promulgating the law (by means of his signature), the head of state orders that the law must be observed and causes it to be published in the official journal. The promulgation is, therefore, an act of the executive branch of government. For Luxembourg, as a constitutional monarchy, the
Constitution also provides that each decision of the grand duke must also be signed by a member of government.\textsuperscript{2}

The royal sanction dates back to a time when power was shared between the monarch and the people. Whereas, historically, the sovereign power belonged to the monarch, over the past century, the locus of sovereignty has shifted increasingly to the people.\textsuperscript{1} The prerogative of sanction of laws was a constitutional right of veto by which the monarch could block decisions of Parliament. In the constitutional history of Luxembourg, no monarch has ever used this veto right, and so it came to be considered, over the years, as a merely formal right accorded to the grand duke.

The royal sanction or confirmation of laws is not unique to Luxembourg. Other European monarchies, such as the Netherlands, Denmark, Spain, and Belgium, have similar provisions in their constitutions.\textsuperscript{4}

2. The participation of the grand duke in the legislative power

The Constitution refers to the grand duke as the “head of state, the symbol of its unity and the guarantor of national independence.”\textsuperscript{5} Given that Luxembourg is a constitutional monarchy, the grand duke has only those powers that are explicitly conferred on him by the Constitution and the laws. Politically, the Constitution puts the sovereign above the political parties. The grand duke enjoys immunity before Parliament and the courts for his actions. Accordingly, all decisions of the grand duke must be countersigned by a ministerial member of government who is accountable to Parliament for the grand duke’s decisions. By the same token, all of the grand duke’s speeches must be similarly approved by the government.

The grand duke has two legislative powers. First, he has the right of initiative, which permits him to authorize the government to submit bills to Parliament. Second, following the parliamentary adoption of a draft law, he has the right of assent, without which the draft may not become a law. Luxembourg laws bear the date of their confirmation by the grand duke rather than the date of their adoption by Parliament.

In December 2008, when it appeared that the Luxembourg Parliament was about to approve a parliamentary initiative that, under certain conditions, would authorize euthanasia and medically assisted suicide, the grand duke informed the prime minister and some ministers of his cabinet that he would

\textsuperscript{2} Const. art. 45 (Lux.).
\textsuperscript{1} Const. art. 32 now provides that the sovereign power resides in the nation and that the grand duke exercises this sovereign power according to the Constitution and the laws of the country.
\textsuperscript{4} See GW. art. 87 (Neth.); Const. art. 22 (Den.); C.E. art. 91 (Spain); Const. art. 109 (Belg.).
\textsuperscript{5} Const. art. 33 (Lux.).
not sign or sanction such a law. He objected to this law on moral grounds; he stated that he could not approve a law that would authorize medical staff to take active steps to put an end to the life of a person suffering from an incurable disease, even if that person had expressed the wish for them to do so. The question then arose as to how to deal with such an action on the part of the grand duke, knowing that he intended to intervene in a political debate and contradict a decision of Parliament.

3. The responsibility of members of government

Members of government are responsible before Parliament for their actions and for those of the grand duke, as the government signs off on his decisions and speeches. The content of meetings between the grand duke and his ministers is confidential. As the government was of the opinion that a decision of Parliament must be respected in all circumstances, a constitutional question arose as to whether the disagreement between the grand duke and the government could be made public, and whose opinion must prevail.

In general, a divergence of views between the grand duke and his prime minister is not to be made public. According to an unwritten constitutional principle, the grand duke can express his views to the members of government; however, he may not state his own views publicly, unless they have been previously approved by the prime minister and are in concert with the government’s position. As a consequence of the political responsibility vested in the ministers and the monarch’s corresponding lack of political accountability, there cannot be any public disagreement between the head of state and the government in a constitutional monarchy such as Luxembourg.

In the instant case, concerning the draft law on active euthanasia, the government was of the opinion that it had no other choice than to submit the law approved by Parliament to the grand duke for signature, and that the monarch was equally obliged to sanction and promulgate the law.

In a parliamentary democracy, in a case of disagreement between the government and the monarch, the government’s view must prevail because the latter is responsible before Parliament. In a case of serious disagreement between Parliament and the members of government, the government must resign.

Despite the principle of the necessary conformity between the views of the head of state and those of his ministers, the government proposed to the grand duke that he sign the law but, at the same time, publish his personal ethical objections to the text. However, this proposal was not satisfactory to the grand duke; consequently, another solution had to be found. In order to clarify the reasons for the forthcoming constitutional change, the prime minister, in an unprecedented statement, had to make public a serious disagreement between the government and the monarch.
4. Royal assent in a modern constitutional monarchy

Parliament, whose members are chosen in free elections and who represent the nation, must be the only institution to decide on laws in a parliamentary democracy. It is for the government to give effect to those laws and for the people to observe them. If the laws do not comply with the Constitution, there is the possibility of judicial review before a constitutional court. The monarch’s role transcends party lines, and his lack of political accountability make it impossible for him, in a modern democracy and constitutional monarchy, to express a political opinion. The royal assent forces the monarch to express an opinion on a text approved by a majority of Parliament. Because the Luxembourg head of state had never before used the institution of assent to express his disagreement, and because the government was convinced that the head of state as well as his ministers were required to sign the law adopted by Parliament, the government suggested to the grand duke and to Parliament that the ducal sanction of laws be abolished. With the agreement of the head of state and all members of Parliament, the Constitution was amended to this effect. The new text of article 34 reads as follows: “The Grand Duke promulgates the laws within a period of three months after the vote of Parliament.” Thus, it has been made clear that the grand duke as well as his ministers are now required to sign the laws in order for them to be made known and observed, and to do so within a compulsory period prescribed by the Constitution.

5. Royal powers in a representative monarchy

Further constitutional changes are likely to occur in Luxembourg as a consequence of the recent constitutional amendment. Indeed, in order to strengthen the grand duke’s role as a symbol of the unity of the state and to ensure that he will not have to take sides in political debates, it is probable that some additional, mostly formal royal prerogatives will also be transferred to the government in future constitutional reforms.

For example, the Constitution may be changed so as to allow the government to submit draft laws to Parliament without royal approval, that laws will be promulgated by the prime minister, and that civil servants will be appointed, in future, by the government and no longer by the grand duke. Aside from his important symbolic functions, the grand duke’s main political role, henceforth, will be to appoint, following consultation with the political

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6 Const. art 95 (Lux.).

7 See Lux. parl. Doc. 5967. Constitutional amendments have to be voted on twice by Parliament. The law was adopted unanimously in December 2008 and March 2009.
parties, the person in charge of forming the government after general elections have been held, as well as the prime minister and the members of the government.

The constitutional changes that are taking place in Luxembourg, leaving political decisions exclusively to the government and the Parliament, may be seen as a useful clarification and modernization of the Luxembourg democracy.