CPT/Inf (2017) 22

Response

of the Government of the Principality of Liechtenstein to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Liechtenstein

from 20 to 24 June 2016

The Government of the Principality of Liechtenstein has requested the publication of this response. The CPT's report on the June 2016 visit to Liechtenstein is set out in document CPT/Inf (2017) 21.

Strasbourg, 25 August 2017

Response of the Government of the Principality of Liechtenstein to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning its visit to Liechtenstein from 20 to 24 June 2016

Vaduz, 22 May 2017

Introduction:

The promotion and the protection of human rights and the rule of law are priorities for Liechtenstein's domestic and foreign policy. In this conjunction, good cooperation with international monitoring and prevention mechanisms is of central importance.

After the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came into force for the Principality of Liechtenstein on 2 December 1990, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has visited Liechtenstein on four occasions (1993, 1999, 2007 and 2016). The reports on the first three visits were published together with the respective government responses on the CPT website.[1]

The last visit made by the CPT to Liechtenstein took place from 20 to 24 June 2016. The CPT approved its report at the 91st meeting held from 7 to 11 November 2016, and then forwarded this together with the accompanying letter of 15 December 2016 to the Liechtenstein authorities. In addition, the CPT asked the Liechtenstein authorities to respond within six months with a comprehensive description of the measures that are to be implemented, also including responses to the recommendations as well as answers to the requests for information.

The current statement adheres to the structure of the Committee's report. The CPT's recommendations, comments and requests for information are shown in "bold" italic typeface.

1 http://www.coe.int/en/web/cpt/Liechtenstein

Recommendations, comments and requests for information:

I. INTRODUCTION

Fig. 7:

The CPT welcomes the planned introduction of torture into the Liechtenstein Criminal Code ("StGB") and trusts that the Liechtenstein authorities will take the necessary steps to ensure that the crime of torture will be punishable by appropriate penalties which take into account the grave nature of the crime and will not be subject to any statute of limitations.

It may be reiterated that the government has appointed a working group that is responsible for preparing a large number of amendments to the Liechtenstein Criminal Code. Inter alia, in its report to the government of 13 July 2016, the working group proposed adopting the torture provision of § 312a of the Austrian Criminal Code. Work is currently being undertaken to realise this objective. The corresponding consultation report is expected to be approved in the second half of 2017.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police custody

1. Mistreatment

Fig. 11:

The CPT has misgivings about the practice of police officers occasionally wearing masks when effecting an apprehension. The Committee considered that only exceptional circumstances can justify measures to conceal the identity of law enforcement officials carrying out their duties. Where such measures are applied, appropriate safeguards must be in place in order to ensure that the officials concerned can be held accountable for their actions (e.g. by means of a clearly visible number on the uniform).

The view of the CPT is accepted unequivocally. In fact, measures to conceal the identity of police officers in the form of face masks worn by the officials concerned are considered only in exceptional situations. This is done in accordance with the principle of proportionality. A balance is also struck between the interests of the respective individuals in being able to directly the persons in question, and the security interests of the officials concerning protection from revenge attacks. In practice, this is considered only for particularly violent offenders, specifically case of criminal organisations or gangs. These make up only a very small number of individual cases. In the interim, all officials of the special unit who conduct such arrests or security transports now have clearly visible numbers, meaning that they can if necessary be identified indirectly.

2. Safeguards against mistreatment

Fig. 12:

The CPT recommends that a custody register (electronically or on paper) be immediately re-established at the National Police Headquarters.

All custody procedures or aspects are without exception recorded in various case documents. However, these can be retrieved only by studying the documents, and not by means of a separate register. This is because the police or prison organisations do not require a register of this nature. Despite this, the competent authorities will consider drawing up a separate register of this nature, and recording the procedures or aspects in this.

Figs. 14 and 15:

The CPT reiterates its recommendation that the Liechtenstein authorities take the necessary steps to ensure that all persons deprived of their liberty by the police – for whatever reason – are formally guaranteed as from the outset of their deprivation of liberty, the right to inform a relative or other person of their choice of their situation.

The ascertainment of identity pursuant to Art. 24 of the Liechtenstein Police Act (“PolG”) is not an end in itself. It is not possible to arrest an individual solely on the grounds of the need to ascertain their identity. This is always done for a specific purpose, leading to subsequent legal consequences (statement of accusations, notification of rights, notification of family members).

The person is "apprehended" for the purpose of ascertaining their identity. If the identity of the apprehended person cannot be ascertained locally, then the apprehended person will be brought to the police station in order to enable further measures to be performed for the purpose of ascertaining his or her identity. This does not yet constitute an arrest. The principle of proportionality is applicable (Art. 23 PolG). The further procedural rules, in particular in respect of an apprehension or arrest, are in accordance with the relevant statutory provisions.

Ascertainment of identity involving deprivation of liberty may occur for two reasons:

1) For preventative police reasons for the purpose of police custody pursuant to Art. 24h Para. 1 Letter a - d PolG (this also includes offences under aliens law). In this event, family members are notified pursuant to Art. 24h Para. 4 PolG.

2) For the purpose of making accusations or arrest pursuant to the Code of Criminal procedure (§§ 126 and 127 StPO). A person of trust is then notified in accordance with § 128a StPO.

This means the contacting of family members or persons of trust is ensured in all cases of a preventative police apprehension or repressive police arrest of a criminal suspect. An arrest solely for the purpose of ascertaining identity, without pursuing any further purpose that is governed by law, does not occur.

Fig. 19:

The CPT calls upon the Liechtenstein authorities to take the necessary steps – including at the legislative level – to ensure that:

- **the right to meet a lawyer and to have him/her present during police questioning is enjoyed by all persons derived of their liberty, as from the moment that they are obliged to remain with the police;**
- **the rights to talk to a lawyer in private and to have a lawyer present during questioning are never totally denied to persons deprived of their liberty by the police**.

The corresponding provisions need at any rate to be interpreted and in practice are also applied in such a way that the right to engage a lawyer is guaranteed by law from the outset of the deprivation of liberty. This is also correspondingly applied in practice. In this conjunction, reference may also be made to § 23 Para. 3 StPO, which is worded as follows:

However, insofar as the provisions of this Act concerning the accused do not appear to be limited to the investigation by their nature, they are also applicable to the accused and to the person who is suspected of having committed a criminal offence or has been called in for questioning or held in custody or detention, or against whom compulsion has been exercised (§ 9 Para. 4).

In respect of the second recommendation arising out of Fig. 19, it is important to note that for the Office of the Public Prosecutor the provisions of §§ 30 Para. 3 or 147 Para. 2 StPO are considered only in very specific exceptional circumstances, for example if the attorney is himself suspected of having been involved in the offence. The CPT's suggestion that in these rare exceptional circumstances another lawyer should be provided by law, possibly appointed by the Bar Association, is worthy of consideration. In this conjunction, reference is made to § 59 of the Austrian Code of Criminal Procedure) "öStPO") in the version of BGBl I 2016/121, in particular Para. 4, which came into force only on 1 January 2017. This provision would appear to ensure that in the circumstances cited in the report the arrested person will at any rate be provided with a "standby defence counsel". § 59 of öStPO is worded as follows:

1) If an accused party, who does not yet have a defence counsel, is arrested or presented for immediate questioning (§ 153 Para. 3), then before his questioning he must be given the opportunity to contact, to appoint and to authorise a defence counsel, unless the accused party expressly declares that he does not wish to involve a defence counsel for the period that he is being held by the criminal police (§ 50 Para. 3). In this event the attention of the accused party must be drawn to the fact that he or she may revoke this waiver at any time. After being taken to the prison, the accused person must be given the opportunity to contact and to appoint a defence counsel without delay.

2) Prior to the transfer of the accused party to the prison, the contact with the defence counsel may be limited to the extent necessary for the issue of the power of attorney and general legal information, insofar as special circumstances mean that it appears absolutely necessary for immediate questioning to take place or other investigations to be conducted in order to avert a significant impairment of the investigations of or evidence. In this case, grounds for this restriction must be presented by the criminal police to the accused person in writing within 24 hours.

3) The accused party may communicate with his defence council without this being monitored.

4) Insofar as the accused party in the cases specified in Para. 1 does not draw upon the services of a freely appointed defence counsel (§ 58 Para. 2), then before the decision is taken on whether to remand him or her in custody he or she must upon request be given the opportunity to contact a "standby defence counsel" who has declared himself or herself willing to take on defence cases of this nature. The bar associations have lists of defence counsels who have declared themselves willing to take on defence cases of this nature, and who can be contacted at any time. The Austrian Minister of Justice has the authority to contractually commission the Austrian Bar Council to establish a stand-by legal service of this nature.

Fig. 20:

The CPT recommends that steps be taken, including at a legislative level, to ensure that a fully-fledged and properly funded system of legal aid for indigent persons at the stage of police custody be developed. This system should be applicable from the very outset of police custody. The relevant information sheets provided to detained persons should be amended accordingly.

The legal aid system applies to persons who are indeed remanded in custody following arrest, when the arrested party is brought before the investigating magistrate. Persons with limited financial resources are also provided with legal counsel and free initial consultation with a lawyer.

Fig. 22:

The CPT recommends that the Liechtenstein authorities take the necessary steps to ensure that all persons who have been deprived of their liberty by the police in a non-criminal context are informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). To this end, a specific information sheet should be elaborated and be given to every such person upon their arrival at the National Police Headquarters.

Persons who are taken into custody on the grounds of their mental state are typically unable, on account of their mental state, to understand the legal information with which they are provided at this time. Otherwise, they should not be taken into custody. They may also be held only for as long as this condition lasts, or possibly until another measure is ordered by the official medical officer, which shall then be assessed by the court. The competent authorities make an assessment of which cases such information sheets are actually of use in practice.

There is no reason why persons who are taken into custody merely in order to ascertain their identity should not be informed of their rights. These cases are rare, however, and for this reason no separate information sheet has been produced. These persons are, of course, informed about their legal rights orally. This is documented in the questioning records.

B. Vaduz State Prison

1. Introductory remarks

Fig. 26:

The CPT would like to receive a copy of the working group's final report, as well as information taken by the Liechtenstein authorities in the light of this report.

The government took note of the report of the working group on the strategic restructuring of the prison system (see appendix) at the meeting of 14 February 2017, and essentially approved the broad direction of the concept. In future, all inmates are to be held in Austrian prisons in accordance with the existing legal agreement with Austria. A dedicated system for inmates who are about to be released is to be set up for inmates who will be living in Lichtenstein after their release. For this purpose, the costs and organisational measures are being discussed with the competent authorities. This process is still ongoing.

Fig. 28:

The CPT recommends that the Liechtenstein authorities take the necessary steps to ensure that specific rules for the detention of irregular migrants are established and implemented in practice, taking into account the comments made by the Committee in paragraphs 75-100 of its 19th General Report (CPT/Inf (2009) 27).

The small size of the prison means that it is not possible to establish different security zones, meaning that inmates can move more freely in certain zones than in others. If inmates who are due to be deported were separated from other inmates, this would effectively mean that they would be held in isolation, because there is seldom more than one inmate due to be deported being held in Vaduz at any one time. On account of the small size of the institution, there are limits on the variety of activities available to inmates, and not just for inmates who are due to be deported. Nevertheless, an assessment will be made of the extent to which inmates who are due to be deported can be held under less onerous conditions.

2. Conditions of detention

Fig. 32:

The Committee encourages the Liechtenstein authorities to pursue their efforts to expand the offer of activities for all prisoners at the State Prison.

This is one of the questions currently being discussed within the context of the restructuring of the prison system in Liechtenstein (see Fig. 26).

Fig. 33:

The CPT noted that outdoor exercise, pursuant to the StrVG and the House Rules, is obligatory for all prisoners on days on which they are not working outside the prison, and called for this rule to be abolished.

It is widely known that adequate outdoor exercise is essentially good for physical and mental health. With this rule, the state exercises its duty of care towards inmates. No compulsion is exercised to enforce this duty of care, however, meaning that the obligation is merely of a declaratory nature. Within the context of normal prison procedures, inmates do not have to be ordered to take outside exercise. As a rule, they welcome the opportunity to leave their cells and to take outside exercise. If these refuse to engage in outside exercise for several days, then the doctor will be informed.

Fig. 34:

The CPT invites the Liechtenstein authorities to revise the design of the yard to make it more inviting (for instance, by creating a horizontal outside view) and to equip it with at least some basic sports equipment.

The roof yard was not built primarily as a yard for women. Its actual purpose is to be used by inmates who are considered at risk of absconding, and for this reason it is a high security yard. The only reason it is used for women is because it provides the very small number of women being held in the State Prison with more privacy (no unpleasant looks and calls from male inmates with cell windows overlooking the main yard). The installation of a horizontal opening has been examined in the past. The reason that a window of this nature has not been installed is because it would be disproportionately expensive to do so. In other respects, the horizontal view of the mountains is available at all times from the prison cell, depending upon the time of the year and the amount of daylight.

The problem of protection from the elements in both yards has been recognised and will be solved. Table tennis and chess, which are available in the main yard, make little sense in the roof yard, because as a rule only one male or female inmate spends time in this yard on their own. Opportunities for sporting activities on the roof yard have been examined, whereby gymnastics that do not involve any equipment is possible at all times. The installation of permanent seating or the procurement of suitable gymnastic equipment is being assessed.

Fig. 35:

In the view of the CPT it is regrettable that neither of the two outdoor exercise yards are equipped with shelter against inclement weather. Steps should be taken to remedy this shortcoming.

Shelter against inclement weather exists in the main yard for a limited number of persons. Inmates are able to remain in shaded areas most hours of the day. Nevertheless, improvements are also being considered here. Raincoats are available in the court, which may be used by inmates to protect themselves against the weather when exercising outside on rainy days.

Fig. 36:

The CPT recommends that the Liechtenstein authorities continue their efforts to provide female inmates with purposeful activities and appropriate human contact. Consideration should also be given to offering activities – including access to the outdoor yard – in which both male and female inmates may participate together (under the supervision of staff).

There has been an agreement for many years with the Office for Social Affairs, to the effect that female inmates who are imprisoned on their own are held under less stringent conditions, in order to reduce the extent to which they are effectively held in solitary confinement by virtue of their being the sole female inmate in the prison. Less stringent visiting rules also apply. This is contingent, however, upon their receiving visitors.

Pursuant to applicable law, female and male inmates must be held separately (Art. 8 Para. 2 Sentence 1 of the Liechtenstein Penal Code – “StVG”). To a certain extent, there is a conflict between this provision and the purpose of the imprisonment as set out in Art. 19 StVG. This is because proper interaction between the genders is a requirement for society. For this reason, efforts have been made in recent years to deploy female prison officers as well as male prison officers (for women and for men). Increased mixing of men and women inmates and the statutory loosening of the applicable Art. 8 StVG would inevitably lead to more intensive or closer supervision of the inmates, i.e. the deployment of more personnel. In addition, special rules and zones would need to be created for those prisoners who are unable to cope with mixed-gender activities. On account of the fact that women are rarely imprisoned in the State Prison, this additional cost and workload is difficult to justify.

3. Health care

Fig. 39:

The CPT calls upon the Liechtenstein authorities to take the necessary steps to ensure that all persons admitted to the State Prison (irrespective of their legal status) are examined by a doctor, or by a qualified nurse reporting to a doctor, within 24 hours of their admission and that a medical file is opened for every prisoner.

When the police apprehend an individual, the question of health is already entered into the personal record. The classification "healthy" or "ill" is made at this stage. If the health of the respective person is not clear, then the police contact a doctor immediately before the person is taken into custody, and the respective person is presented to the doctor before being imprisoned.

In the event of a direct admission to the State Prison, the current state of health is ascertained by the senior official during the admission interview. If a health impairment is ascertained or claimed, then the inmate is given the opportunity to consult the prison officer in charge or the current emergency doctor.

If the state of health is not problematic, according to the person in question, then with his or her consent, a regular visit will be arranged and the State Prison will inform the doctor in writing in all three cases.

This means the question of an examination within the first 24 hours does not arise. In the case of ill patients, or if the respective person urgently wishes to consult a doctor, then the examination always takes place within 24 hours or even significantly sooner.

Fig. 40:

The CPT recommends that the Liechtenstein authorities take the necessary steps (including through the issuance of instructions) to ensure that the above-mentioned precepts are effectively implemented in practice.

It is indeed the case that no standardised examinations are conducted. Instead, an anamnesis and – if necessary – a physical examination is conducted. Specific regulations do not exist at the present time. The responsible bodies are considering standardising the procedure.

Fig. 41:

The CPT recommends that steps be taken to ensure that prisoners have confidential access to the doctor (e.g. by submitting such request forms in sealed envelopes) and that the House Rules are amended accordingly.

As the State Prison in Vaduz does not maintain a permanent medical department, it is currently the case that many inmates deliberately release the doctor from the medical duty of confidentiality vis-à-vis personnel, enabling them to ensure special medical treatment can be provided on a day-to-day basis in the prison. The size of the State Prison means that the recommendation that a discreet reporting system should be introduced for inmates who do not sign a release from the medical duty of confidentiality is impractical. This is because the doctor would then have to come to the State Prison every time this was requested by an inmate, simply to open the envelope and to judge how serious the matter was.

Fig. 43:

The CPT recommends that arrangements be made to ensure prompt access (of authorised persons) to inmates' medical files at any time in the case of an emergency, including during the doctor's absence and after the termination of his (and any future prison doctor's) contract with the prison.

The medical files are digitalised and saved on a laptop that is not connected to the police via ethernet. The aforementioned laptop is not the private property of the prison doctor, but was made available to the prison doctor by the Office of Health. It is kept locked in a safe in the State Prison, and cannot be accessed by the personnel. The establishment of records in filing cabinets would constitute a breach of the doctor's duty of confidentiality or of medical confidentiality if these records were accessible by non-medical personnel. It is being examined whether the medical records should be presented to each patient/inmate following the respective medical visit. This would ensure that these documents were available in an "emergency".

Fig. 44:

The CPT recommends that the Liechtenstein Authorities continue their efforts to ensure that all inmates in need of psychiatric in-patient care/treatment are transferred to an appropriate hospital without undue delay; it would like to be informed about any developments in this respect.

In the interim, the responsible Ministry of Public Health has examined whether the clinics run by Grisons Psychiatric Services (Psychiatrischen Diensten Graubünden – "PDGR") are suitable for the admission of Liechtenstein prison inmates. PDGR is essentially willing to reach an agreement with the Principality of Liechtenstein concerning the admission of prison inmates in acute cases, also including an obligation on the part of the PDGR to accept such inmates. The responsible public authorities are currently examining the relevant issues in the prison field. This would then require a state treaty to be signed between Liechtenstein and Switzerland.

4. Other issues

Fig. 45:

The CPT encourages the Liechtenstein authorities to ensure the daily presence of a female officer/custodial staff.

Female applicants have for many years been given preferential treatment when filling vacancies. The daily presence of female prison officers would entail substantial changes to the shift system and for the available personnel, and is not realistic for the coming years, unless additional female personnel were recruited.

Fig. 48:

The CPT considers that all prisoners should be entitled to at least one hour of visits every week. Juvenile prisoners should receive more favourable treatment. The CPT recommends that the applicable rules be amended accordingly.

Liechtenstein has adopted the Austrian StVG. This also applies to the length of visits, but also regularly permits longer visiting hours, if the running of the prison makes this possible. As a rule, this does indeed tend to be the case. Because this constitutes a perk, it may also be limited or reduced in individual cases. In the past, the experience of the State Prison over many years has been that the withdrawal of perks is significantly more effective than the imposition of statutory disciplinary measures, if the behaviour of an inmate is in breach of the relevant rules. The withdrawal of perks and the reasons for this are documented, as is the imposition of other disciplinary measures that restrict statutory rights. The individual in question may also appeal against the withdrawal of a perk. The generous granting of perks in the event of good behaviour, and the restriction of perks in the event of misbehaviour, serves the purpose of the imprisonment (Art. 19 Para. 1 StVG) more than the restriction of rights. It is recommended that the amendment of the Austrian StVG should be monitored, and adoption or reception thereof should be assessed, provided this has proven to be successful in Austria. The subsequent adoption of proposed amendments has also proven effective in other legal fields.

Fig. 49:

The CPT recommends that the Liechtenstein authorities amend the relevant legislation, in order to ensure that all prisoners (including those on remand) are as a rule entitled to have regular and frequent access to the telephone.

For reasons that are worthy of consideration (Art. 88 StVG), prisoners are entitled to conduct telephone conversations and also conduct telephone conversations on a regular basis. For the same reason, even those inmates who are unable to afford telephone calls themselves are given the opportunity to make telephone calls. Even if no absolute legal entitlement exists to make telephone calls at any time, inmates do indeed as a rule make telephone calls. It is of course indeed the case that prisoners on remand are not permitted to make telephone calls if the investigating magistrate restricts the making of telephone calls for reasons set out in the Code of Criminal Procedure. In respect of the subsequent adoption of the reformed Austrian StVG and StPO, reference is made to Fig. 48.

Fig. 50:

The CPT recommends that Liechtenstein authorities take steps to ensure that the rules governing remand prisoners' contacts with the outside world are revised.

The Austrian StPO serves as the basis for the Liechtenstein StPO. It is recommended that the amendments of the Austrian StPO should be monitored, and adoption or reception thereof should be assessed, provided this has proven to be successful in Austria. The subsequent adoption of proposed amendments has also proven effective in other legal fields.

Fig. 51:

The CPT encourages the Liechtenstein authorities to explore the use of modern technology in facilitating communication between prisoners and their families (i.e. through a voice/video over internet protocol system).

The responsible authority will examine the use of alternative communication technologies in the State Prison.

Figs. 52 and 53:

The CPT recommends that the Liechtenstein authorities take steps – including at the legislative level – to ensure that the disciplinary sanction of solitary confinement does not lead to a total prohibition of family contacts, and that any restrictions on family contacts as a form of disciplinary punishment are applied only when the offence relates to such contacts.

This question is likewise a question of the manner in which the StVG is adopted. In view of the absence of applicably cases, this does not appear to be a matter of urgency. As the State Prison, as already mentioned, operates more successfully by restricting perks, solitary confinement is applied only in extreme cases and very rarely. The maximum period of solitary confinement has never actually been imposed to date. In the case of juveniles, the situation is even more particular, because usually a maximum of one juvenile is imprisoned in the State Prison at any time. A special regime has been organised for such instances, tailored to the particular case, in order to ease the solitary confinement conditions to the extent that is possible. Because solitary confinement cannot be imposed upon juveniles by law, there is also no need to respond to this point. Instead, reference is made to the track record and resulting statutory amendments in Austria.

Fig. 54:

The CPT recommends that the Liechtenstein authorities take steps to ensure that inmates are systematically provided with a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. In this context, inmates having difficulties in understanding the German language should be provided with the necessary assistance.

This question is being assessed internally by the responsible authorities. As already set out under Fig. 48, it is recommended that the amendment of the Austrian StVG should be monitored, and adoption or reception thereof should be assessed, provided this has proven to be successful in Austria. The subsequent adoption of proposed amendments has also proven effective in other legal fields.

Fig. 55:

For the CPT it is regrettable that the law does not provide for daily visits to prisoners in solitary confinement by a health care professional. The CPT recommends that this deficiency be remedied.

Because, pursuant to Art. 111 StVG, solitary confinement may be imposed only on healthy prisoners, and because a prisoner who has been sentenced to solitary confinement is entitled to medical assistance in the manner of any other prisoner, solitary confinement is not imposed if the doctor is of the view that the solitary confinement could jeopardise the health of the prisoner. In such cases, it goes without saying, prison officers remain obliged to inform the doctor if there are signs of health impairment.

Fig. 56:

The CPT reiterates its recommendation that the Liechtenstein authorities take steps without further delay to ensure that such a register is established (containing in particular the following information: the times at which the measure began and ended, the reasons for placement; name of the persons who ordered the placement; date and time of the end of the placement; visits by health-care staff).

The introduction and structure of a register of this nature is currently being examined.

Fig. 57:

In the CPT's view, handcuffing during transportation should be resorted to only when the risk assessment in the individual case clearly warrants it.

The statements made by the CPT are incorrect. The inmates are classified into various security categories. Depending on the inmate's particular category, the inmate may be allowed out of the prison in order to visit official agencies or doctors (dentists) either unattended, or accompanied by an unarmed prison officer or by a police officer. If the transport is conducted by the police, then the procedures are in accordance with the regulations of the National Police, which are based on the provisions of the Police Act, and in this instance are subject to Art. 27a PolG together with its sub-clauses. The applicable regulations concerning the transportation of prisoners correspond in every aspect to the

statutory rules and are also no different from the doctrine of other police forces under comparable systems.

Fig. 59:

The CPT recommends that inmates be systematically informed of the modalities to lodge internal and/or external complaints. Further, steps should be taken to ensure that inmates can lodge complaints on a confidential basis (for instance, by using complaints boxes and/or closed envelopes).

The applicable procedural provisions concerning official complaints or complaints about the content of rulings are not easy for inmates to find without the support of legal counsel. In this conjunction, improvements in the provision of information about complaints procedures and the way in which complaints may be lodged are being assessed.

D. Situation of persons subject to a court-ordered preventative measure

Fig. 63:

The CPT would like to be informed of the number of persons sentenced by a Liechtenstein court who are currently being held in Austria under Sections 21, 22 and 23 StGB and of the establishments where the persons concerned are being accommodated. Further, if applicable, the Committee would like to receive detailed information on any review procedures carried out in the context of such placements.

As already stated in Fig. 62 by the CPT, the court is obliged ex officio to conduct an annual review into whether continued placement is necessary. For this purpose, an opinion is obtained from the attending physicians, the public prosecutor as well as an expert opinion, mostly from the field of psychiatry and psychotherapy. Once these opinions have been obtained, the court decides whether continued placement is necessary, or whether the inmate may be conditionally released.

In the first instance, a new review is conducted shortly before six and/or twelve months have elapsed. In the event of a conditional release, a trial period, mostly lasting five years, is imposed, and additional probationary support and/or specific instructions are provided.

At the present time, three persons convicted in Liechtenstein are subject to court-ordered preventative measures in Austrian institutions, two in Göllersdorf Prison and one in Vienna Mittersteig Prison. One person (born 1966) has been subject to a court-ordered preventative measures since 2004, one (born 1970) since 2011 and one (born 1990) since 2012.

E. Involuntary placement of a civil nature

Fig. 65:

As regards the involuntary placement of psychiatric patients in particular, several agreements had been concluded to this effect with local psychiatric or general hospitals in both neighbouring countries. However, it remained unclear how many persons were held abroad who needed to be placed in care institutions other than hospitals, namely persons with disabilities and substance dependence (both including minors) and severely neglected persons, and where these persons were being accommodated. The CPT would like to receive further clarification about these points.

The figures cited here for 2015 need minor correction: 45 cases were conducted after an immediate placement on the grounds of imminent danger (Art. 12 Para. 2 SHG), or were initiated on such grounds. Of these, 41 were declared admissible and 4 were declared inadmissible. 5 further cases were conducted in accordance with Art. 12 Para. 1 SHG.

In the year 2015, two cases were conducted at the Court of Justice involving the placement of juveniles pursuant to Art. 25 ff. KJG. In one case, immediate placement on the grounds of imminent danger (Art. 28 Para. 2 KJG) was declared admissible. In the other case, a solution was ultimately identified that meant that involuntary placement did not become necessary.

It was also stated that it remained unclear how many persons were held abroad who needed to be placed in care institutions other than hospitals, namely persons with mental disabilities and substance dependence as well as severely neglected persons, and where these persons were being accommodated. It is not entirely clear what is meant by this. The first and mandatory necessary precondition for a placement is the existence of a state of weakness in the person in question, relating to the physical and mental condition of the person. It is only if a state of weakness of this nature exists that an involuntary placement in an asylum or involuntary retention in the asylum may be considered. The law specifies three possible states of weakness in Art. 11 Para. 1 SHG:

- 1) Mental disorder, including within the meaning of a neurotic disorder, which prevents the affected person from attending properly to his or her own affairs without detriment to themselves (LES2002, 103; Court of Appeal 02.08.2012, 02 SH.2012.15). This precondition is described by the law as a mental illness or mental weakness under Art. 11 Para. 1 SHG.
- 2) Substance dependency: Substance dependencies within the meaning of Art. 11 Para. 1 SHG mean alcohol dependency, drug dependency and medication dependency. Neither the physical dependency, nor the harmful nature of the drug is of relevance in this conjunction. A placement is justified if the person in question requires personal support on account of this dependency that cannot be provided without a deprivation of liberty. Swiss legal practice and jurisprudence applies the same substantive statutory rules.
- 3) State of neglect: Pursuant to Art. 11 Para. 1 SHG, a serious state of neglect may also be one reason for a placement. In this conjunction, it is not necessary to wait until a condition has developed that is no longer capable of improvement. An intervention may be approved before this, if this is likely to prevent a complete state of neglect. This reason for a placement is not contingent upon the person in question being

homeless. At any rate, the state of neglect may not be seen as sufficient excuse for all possible grounds for an involuntary placement, meaning that a definitive list of the statutory preconditions can be avoided. A placement on the grounds of neglect at any rate is contingent upon the state of neglect being acute, to an extent that is incompatible with human dignity. This is also in line with the same substantive statutory situation under established Swiss legal practice and jurisprudence.

Art. 11 Para. 1 SHG does not distinguish between hospitals on the one hand and other institutions on the other, as the report claims. Art. 11 Para. 1 SHG does not specify what is meant by an asylum. It is necessary, however, for the asylum to be suitable. Pursuant to established jurisprudence and in accordance with the same substantive legal situation under established Swiss legal practice and jurisprudence, an asylum is deemed to be suitable if this has the organisation and personnel capacity that is required to provide the admitted person with the care and attention that this person essentially requires.

At any rate, Art. 11 Para. 2 SHG does not impose any restriction on the admission of the person in question to a suitable domestic asylum. Instead, the actual location of the asylum to which the person is admitted is not defined (OGH 08.05.2015, 02 SH.2015.11).

Fig. 68:

The CPT reiterates its recommendation that the Liechtenstein authorities take the necessary steps – including at the legislative level – to ensure that all persons who are admitted on an involuntary basis to a psychiatric hospital in the context of an emergency placement procedure are promptly heard in person by a judge.

Following an emergency placement procedure pursuant to Art. 12 Para. 2 SHG, the court must rule on the admissibility of the placement within 5 days. This "initial ruling" concerns the question of whether the imposed emergency placement procedure was admissible in an ex tunc judgement. If the person in question was admitted to an asylum located abroad, which is generally the case, then the hearing of this person before this decision is taken, as is demanded by the report, would be possible only through mutual legal assistance channels. In this case, a decision would probably not be possible within 5 days.

Fig. 69:

The Committee recommends CPT that the necessary steps be taken at the legislative level to remedy this shortcoming.

Pursuant to Art. 12 Para. 4 SHG, the person in need of help must be released as soon as their condition makes this possible. Even if this is not explicitly set out in the statutory provisions, the person in question may request to be released at any time, and this will be decided by the court. At any rate, the attending physicians, as soon as the condition of the person in question means that they can be released, may order this at any time and without recourse to court proceedings.

Fig. 70:

The CPT would like to receive further clarification about this point.

Pursuant to Art. 13 Para. 1 SHG, an expert opinion must be obtained in conjunction with legal proceedings concerning placement or retention. Without this being explicitly stated in the statutory provisions, this expert opinion must be prepared by an independent expert (in particular independent of the asylum in which the person is to be placed). This also corresponds to the established practice, without exception.

Fig. 72:

With reference to the remarks made in Paragraph 66, the CPT recommends that the Liechtenstein authorities take the necessary steps to ensure that, in the context of the conclusion of bilateral agreements with neighbouring countries, the above-mentioned legal safeguards (in particular, the rights to be heard by a judge and to request a judicial review of the placement decision as well as the provision of an independent psychiatric expert opinion in the context of a placement procedure) are formally guaranteed to all persons who are subjected to an involuntary placement order by a Liechtenstein court and transferred to a psychiatric/social welfare establishment outside Liechtenstein.

In this relation, reference may be made to Para. 44.

F. St. Laurentius Nursing Home

Fig. 79:

The CPT trusts that the Liechtenstein authorities will review the staffing levels at St. Laurentius Nursing Home.

The CPT must have encountered a communication problem when assessing the staffing levels. The actual staffing level at the EG station (excluding night staff) at the St. Laurentius Nursing Home is as follows:

3.6 positions for qualified nursing personnel

2.1 positions for nursing personnel with certificates of capacity

2.4 positions for nursing assistants

0.5 positions for activation

Total = 8.6 positions

This staffing level corresponds to a factor of 0.53 per bed (including night care, the factor corresponds to 0.68 per bed).

The quantitative staffing level as well as the grade and skills mix in the field of nursing and care is defined by the management. The managers of the buildings manage the staffing level within the context of the approved budget. The management accountancy conducted by the management entails a monthly report on the fields of finance and personnel. The quarterly results are discussed with the managers, and measures are agreed if necessary.

In general terms it is possible to state that the field of nursing and care at the LAK has a staffing level that is adequate for its daily requirements, and is in accordance with the required level of care.

It is important to note at this juncture that the increase in complex nursing situations (palliative care and short-term care) means that personnel cover for the night shifts in the buildings (normally a qualified nurse and a nursing assistant) is subject to continuous and conscientious review. Because of the steady and substantial rise in complex nursing situations (above all in the field of transitional nursing care), staffing levels at the St. Florin site in Vaduz has already been adjusted – a third night nurse is deployed here, when necessary.

Fig. 82:

The CPT recommends that the Liechtenstein authorities take steps to ensure that a central register on the use of movement-restricting measures (in addition to the entries in residents' personal files) is established at St. Laurentius Nursing Home and, where appropriate, in other social care institutions. The entries in the register should include the following information: the time at which the measure started and ended, the circumstances of the case, the reasons for resorting to it, the names of the person/s who ordered or approved it and of staff who participated in the application, an account of any injuries sustained by residents or staff and if the measure was applied with or without the resident's consent. Further, staff at St. Laurentius should be reminded that every resort to movement-restricting measures should be diligently documented.

The ascertained shortcomings in respect of documentation (ordering or approval) of movement-restricting measures by the respective family doctor represent an accurate description of the situation, and are followed up on an ongoing basis.

The findings and recommendations correspond wholly to the LAK requirements, guidelines and standards. The shortcomings in respect of implementation have been identified, and the process of improvement is being applied on an ongoing basis.

The basis for the decision-making process that leads to the application of movement-restricting measures are medical diagnoses (and their repercussions), nursing observations, risk management as well as assessment instruments used to clarify cognitive abilities. The definitive decisions are taken within the context of resident-focused discussions (residents, family doctors, family members, guardians, key nursing individuals) and are recorded in defined documents. The resident-focused documentation of movement-restricting measures is performed in a verifiable manner as well as in the electronic nursing documentation ("personal files of the residents") in the respective module used to record movement-restricting measures.

Within the context of quality assessments, the LAK has an anonymised list of the currently applied measures per ward for each nursing home. These lists also document which and how many of these measures were taken at the request of the resident or were imposed at the request of the family doctor.

The monitoring entails two annual quality assessments relating to movement-restricting measures.

During the course of the quality measurement checks of nursing procedures that are conducted each quarter, ward managers check that the entire documentation of the nursing procedure is complete.

At the same time, these topics are defined as goals for the responsible nursing specialists within the context of the management process. The MbO process (management by objectives) is conducted on an annual basis.

Fig. 83:

The CPT recommends that, whenever movement-restricting measures are applied without the valid consent of the resident concerned, they always be ordered or approved by a doctor after an individual assessment of the resident.

This recommendation is wholly in line with the LAK Guideline "Movement-Restricting Measures". With immediate effect, in addition to the responses to Paragraphs 82 and 84, the tools used to safeguard the correct implementation by the attending physicians and the responsible nursing staff, the document "Nursing and Care Summary for Attending Physicians" will be forwarded to the attending physicians. This document itemises all important topics, interfaces, tasks and responsibilities within the context of the cooperation between nursing staff and medical staff.

Fig. 84:

In the view of the CPT, the measures described in Paragraph 84 represent shortcomings, and recommends that this deficiency be remedied.

In order to provide individuals who suffer from dementia with the best possible protection from self-harm, while at the same time safeguarding the duty of care of the institutions, there are "controlled wards" in the LAK that are equipped with code-secured exits. This locking system merely means that, if necessary, when the system is activated, the doors of the respective ward can be opened only by entering a code. The current code is clearly displayed on each door, meaning that any person without cognitive impairment is able to open this door. Nursing staff can enter the ward at any time without entering the code or without third-party checks, meaning that this can certainly not be described as a closed ward.

This targeted protective measure is activated only if the ward in question holds individuals who need protection because they are a danger to themselves. As a rule, this requirement applies to only very few patients who are prone to abscond from the ward on account of their mental disorientation. At the same time, patients on this ward who do not require such protection are kept informed about the system at all times, and for this reason do not

consider that these measures constitute a restriction on their freedom of movement.

There is no need to initiate an involuntary placement proceedings pursuant to the Social Welfare Act or legal proceedings to appoint a guardian for all persons on a closed LAK ward. An involuntary placement approved on the basis of a judicial order cannot be executed by the LAK because the LAK does not have any closed wards. In most cases, the individuals who are suffering from dementia have a trusted and close-knit family network. This enables the LAK, at the day-to-day level, to ascertain and to document the presumed wishes or the consent of the individuals in question for these protective measures within the context of resident-focused discussions (affected persons, family members, family doctors, nursing staff). Within this context, the initiation of legal proceedings to appoint a guardian is assessed and discussed in each case.

The following LAK procedural documents set out this topic at the day-to-day practical level within the framework of the nursing process:

- Nursing and care concept
- Ethical areas of activity concept
- Home admission registration form
- Resident admission assessment
- MMSE / watch test assessment
- Movement-restricting measures guidelines
- Resident-focused discussion form
- Long-term nursing care admission checklist
- Guardianship guidelines
- Wellfare power of attorney guidelines
- Guidelines concerning operating conditions for in-patient admission to the LAK

Fig. 87:

Residents could at present only lodge complaints to the establishment's management, but not to an independent outside body, which would be authorised to directly receive confidential complaints and to make any necessary recommendations. The CPT therefore encourages the Liechtenstein authorities to introduce an external complaints procedure in all social care establishments in Liechtenstein.

The Liechtenstein Patient Organisation (Liechtensteinische Patientenorganisation – "LIPO") is available as an external and independent complaints authority.

Following excerpt from the website www.lipo.li:

"The Liechtenstein Patient Organisation supports you if you have questions or issues relating to

doctors, dentists or pharmacists

suspected incorrect diagnosis and treatment

hospital and health resort visits, including in relation to the allocation of costs

Nursing homes and retirement homes

Health insurers and insurance companies“

Another external and independent complaints authority is the Association for Human Rights (Verein für Menschenrechte – "VMR").

The "Association for Human Rights" was founded on 10 December 2016 in Vaduz as the national human rights institution of the Principality of Liechtenstein. On 3 May 2016 the Government approved a report together with draft legislation for the attention of the Parliament. The Parliament approved the draft legislation at the second reading on 4 November 2016. The law came into force on 1 January 2017.

The LAK brochure for residents and family members proactively draws attention to the topics of self-determination and security at the time of the admission interview.

At the practical day-to-day level, in the view of the LAK, family members, the appointed carers and the guardians are best suited to act as an "external and independent" complaints organisation.