

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CPT/Inf (2017) 21

## **Report**

**to the Government of  
the Principality of Liechtenstein  
on the visit to Liechtenstein  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 20 to 24 June 2016**

The Government of the Principality of Liechtenstein has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2017) 22.

Strasbourg, 25 August 2017

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**Copy of the letter transmitting the CPT's report**

Mr Erik Purgstaller  
Office of Justice  
Ministry of Home Affairs, Justice  
and Economic Affairs  
Äulestrasse 70  
FL – 9490 Vaduz

Strasbourg, 15 December 2016

Dear Mr Purgstaller,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Liechtenstein drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Liechtenstein from 20 to 24 June 2016. The report was adopted by the CPT at its 91<sup>st</sup> meeting, held from 7 to 11 November 2016.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Liechtenstein authorities to provide within **six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Liechtenstein authorities to provide, in the above-mentioned response, reactions to the comments and requests for information formulated in this report.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Mykola Gnatovskyy  
President of the European Committee for the  
Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment

## EXECUTIVE SUMMARY

During its periodic visit to Liechtenstein, the CPT's delegation reviewed the measures taken by the Liechtenstein authorities to implement various recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the implementation in practice of the fundamental safeguards against police ill-treatment and the regime offered to different categories of inmate at the State Prison in Vaduz. The delegation also examined the legal safeguards surrounding the involuntary placement of psychiatric patients in psychiatric establishments. In addition, it carried out a visit to a nursing home.

Throughout the visit, the delegation received excellent co-operation from both the national authorities and staff at the establishments visited.

Further, the CPT is pleased to note that its delegation received no allegations of ill-treatment of detained persons by staff in any of the establishments visited.

### Police custody

The delegation heard no complaints from detained persons regarding the practical implementation of the fundamental safeguards against ill-treatment, namely the right to have the fact of one's detention notified to a relative or another trusted person and the rights of access to a lawyer and to a doctor. Further, the CPT welcomes the fact that the rights of criminal suspects to inform a family member or trusted person about their situation and to contact a lawyer are now legally guaranteed as from the outset of their deprivation of liberty, and that all persons detained by the police were offered a telephone conversation with a lawyer free of charge through the 24-hour hotline of the Bar Association.

Nevertheless, the CPT expresses concern about the fact that certain long-standing recommendations regarding fundamental safeguards have not been implemented. In particular, juveniles may still be subjected to police questioning and requested to sign statements without the benefit of the presence of either a lawyer or a trusted person. Further, the Code of Criminal Procedure still provides for the possibility of supervising conversations between a detained person and his/her lawyer and of denying the presence of a lawyer during police questioning. In this regard, the CPT stresses that if, exceptionally, access of a detained person to the lawyer of his/her own choice is delayed or denied, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged. In addition, the Committee recommends that a fully-fledged and properly funded system of legal aid for indigent persons at the stage of police custody be developed.

It is also a matter of concern that a custody register no longer existed at the National Police Headquarters in Vaduz. In the Committee's view, such a register is essential in order to document the most relevant facts of a person's detention, in particular as regards the implementation in practice of the fundamental safeguards against ill-treatment. The Committee therefore recommends that a custody register (electronically or on paper) be immediately re-established.

### Vaduz State Prison

Material conditions of detention remained on the whole very good in the State Prison.

The CPT acknowledges the challenges faced by the management of the prison in providing an adequate regime for all inmates in an establishment of limited size intended to accommodate inmates of different categories, many of whom only stayed in the prison for short periods. Against this background, it appreciates the efforts made to provide the few inmates individually with opportunities to work and to allow frequent access to the outdoor exercise yard and the fitness room. That said, the Committee encourages the Liechtenstein authorities to expand the offer of activities, in particular for inmates held in the establishment for prolonged periods and those under a separation regime.

As regards health care, the CPT welcomes the fact that inmates had the possibility to see a doctor without delay at their own request, that a psychologist visited the prison several times per month and that a psychiatrist was always available on call in case of need. However, it is a matter of serious concern that, despite the specific recommendation repeatedly made by the Committee after its previous visits, newly-arrived inmates still did not benefit from medical screening upon their admission. The CPT stresses the importance of such an examination notably to prevent suicides and the spread of transmissible diseases, as well as for recording injuries in good time. It therefore calls upon the Liechtenstein authorities to ensure that all persons admitted to the State Prison are examined by a doctor, or by a qualified nurse reporting to a doctor, within 24 hours of their admission.

The report also deals with various other prison-related issues, such as staff, contact with the outside world, discipline and security. In particular, the Committee 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.

The Committee notes positively that disciplinary sanctions have hardly ever been imposed on inmates in recent years. However, it is a matter of concern that, according to the Code on the Execution of Sentences, inmates – including juveniles – may be held in solitary confinement for disciplinary reasons for up to four weeks. The CPT expresses its view that solitary confinement should not be imposed for more than 14 days (and preferably less) on adults and not at all on juveniles. In addition, the Committee recommends that the Liechtenstein authorities take steps 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.

### Involuntary placements of a civil nature

The CPT welcomes the Liechtenstein authorities' efforts to clarify existing legal uncertainties regarding the involuntary placement of patients/residents in psychiatric or social welfare institutions abroad through the conclusion of bilateral agreements with Switzerland and Austria. In this connection, the Committee recommends that the Liechtenstein authorities take the necessary steps to ensure that important legal safeguards (in particular, the rights to be heard in person 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.

St Laurentius Nursing Home

Living conditions at St Laurentius Nursing Home were excellent. All residents had spacious and well-equipped rooms, and various activities were offered to them.

The delegation also gained a favourable impression of the care provided, which was based on an individualised approach and took the special needs of persons into account.

In the ward at the nursing home's ground floor, residents prone to abscond could be prevented from leaving by locking the exit door with a key code (*codegesicherter Ausgang*). The Committee considers that the residents concerned could be de facto deprived of their liberty without being offered any safeguards. The CPT recommends that in such cases an involuntary placement procedure under the Social Welfare Act or a court procedure for appointing a guardian be initiated.

As regards the use of movement-restricting measures (*bewegungseinschränkende Massnahmen*), such as the locking the ward's exit door by means of a key code, the installation of rails on the sides of the bed (*Bettgitter*) and attaching a resident in a wheelchair with a seat belt, the delegation was unfortunately not able to obtain a clear picture of the frequency of their use and the procedure followed in practice, as decisions and dates of decisions concerning movement-restricting measures were often not properly documented. However, it appeared that the residents concerned were not always seen by a doctor when such measures were applied to them. 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. In addition, the Committee recommends that a central register on movement-restricting measures be established at St Laurentius Nursing Home and, where appropriate, in other social care institutions.

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a periodic visit to Liechtenstein from 20 to 24 June 2016. It was the Committee's fourth visit to Liechtenstein.<sup>1</sup>

2. The visit was carried out by the following members of the CPT:

- Anton VAN KALMTHOUT (Head of delegation)
- Marie LUKASOVÁ
- Arta MANDRO.

They were supported by Almut SCHRÖDER and Patrick MÜLLER of the CPT's Secretariat and assisted by:

- Veronica PIMENOFF, psychiatrist, former Head of Department at Helsinki University Psychiatric Hospital, Finland (expert)
- Angela Esther DRÖSSER (interpreter)
- Silvia SCHREIBER (interpreter).

### B. Establishments visited

3. The delegation visited the following places of deprivation of liberty:

- State Prison (*Landesgefängnis*), Vaduz
- National Police Headquarters, Vaduz
- Secure room for detained persons at the State Hospital (*Landesspital*), Vaduz
- St Laurentius Nursing Home, Schaan
- Holding cells at the Vaduz Court (*Landgericht*)

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<sup>1</sup> The reports on previous CPT visits to Liechtenstein and related Government responses are available on the Committee's website: (<http://www.cpt.coe.int>).



**C. Consultations held by the delegation and co-operation encountered**

4. In the course of the visit, the delegation held consultations with Thomas ZWIEFELHOFER, Deputy-Prime Minister and Minister of Home Affairs, Justice and Economic Affairs, and with Mauro PEDRAZZINI, Minister of Social Affairs. It also held discussions with senior officials of the Aliens and Passport Office and the Offices of Social Services and Health.

The delegation also met members of the Prison Supervisory Commission (*Strafvollzugskommission*), which had been designated as National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention against Torture (OPCAT).

A list of the national authorities, other bodies and non-governmental organisations with whom the delegation held consultations is set out in the Appendix to this report.

5. Throughout the visit, the delegation received excellent co-operation from both the national authorities and staff at the establishments visited. The delegation enjoyed access to all the places it wished to visit (including those which had not been notified in advance), was provided with the information necessary for carrying out its task, and was able to speak in private with persons deprived of their liberty. The CPT also wishes to express its appreciation for the assistance provided to its delegation its liaison officer, Erik PURGSTALLER, from the Ministry of Home Affairs, Justice and Economic Affairs.

**D. General issues**

6. Following the ratification by Liechtenstein of the OPCAT in 2006, the newly-created Prison Supervisory Commission (*Strafvollzugskommission*)<sup>2</sup> was designated by the Government as NPM under the OPCAT in 2007. According to its mandate, the Commission shall carry out unannounced visits to State Prison in Vaduz at least four times a year and it is empowered to interview prisoners in private and to be provided by the prison management with all relevant information and documentation.

In practice, the Commission frequently visited the State Prison and, occasionally, other places of deprivation of liberty. After each monitoring visit, a confidential report, including concrete recommendations, was transmitted to the Government, while the findings of all visits were summarised and published in annual activity reports. Further, once a year, a meeting was held with the relevant Ministers, which members of the Commission described as a fruitful dialogue.

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<sup>2</sup> The Prison Supervisory Commission was created with the adoption of the 2007 Law on the Execution of Sentences (*Strafvollzugsgesetz – StrVG*). It is composed of five independent members, each appointed for a term of four years (for further details, see Section 17 of the StrVG).

7. While the Constitution of Liechtenstein contains a prohibition of torture and inhuman or degrading treatment or punishment,<sup>3</sup> the Liechtenstein Penal Code (*Strafgesetzbuch* – StGB) does not contain an explicit crime of torture. Instances of torture would currently be prosecuted on the basis of Section 312 of the StGB (“infliction of pain on or neglect of a detained person”). In this regard, the CPT noted that the penalties provided for under that provision (imprisonment of up to two years; up to five years if the offence entails serious bodily harm; a minimum of one year and up to ten years if the offence entails the death of the victim) appear to be very lenient.

The delegation was informed by the Liechtenstein authorities about their plans to incorporate into the StGB of Liechtenstein the crime of torture in the same way as had recently been done in Austria.<sup>4</sup> According to Section 312a of the Austrian Penal Code, acts of torture are to be punished by one to ten years of imprisonment, and in severe cases by up to 15 to 20 years. That said, it is regrettable that, under Austrian criminal legislation, the crime of torture is subject to a statute of limitations of 10 and 20 years respectively (unless it entails the death of the victim). Under international law, the crime of torture should never be subject to a statute of limitations.

The CPT welcomes the planned introduction of the prohibition of torture into the 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.**

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<sup>3</sup> Articles 10, paragraph 2, and 27bis.

<sup>4</sup> Section 312a of the Austrian Penal Code.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Police custody

#### 1. Preliminary remarks

8. Since the CPT's last visit in 2007, the legal framework governing the deprivation of liberty of criminal suspects by the police has undergone significant changes. A major reform of the criminal legislation which was ongoing at the time of the 2007 visit was completed on 20 September 2007 with the adoption of numerous amendments to the Code of Criminal Procedure (*Strafprozessordnung* - StPO) and the Law on Juvenile Justice (*Jugendgerichtsgesetz* - JGG).<sup>5</sup> The relevant provisions which were referred to in the CPT's report on the 2007 visit as "draft" provisions remained unchanged.

It is recalled that, whenever a person has been detained<sup>6</sup> by the police, the competent prosecutor and judge must be informed immediately. The prosecutor must submit to the court "without delay" (*unverzüglich*) and within 48 hours at the latest a request that the person be remanded in custody. The judge must then hear the person concerned without delay and at the latest within 48 hours of receipt of the prosecutor's notification, and take a decision as to whether to impose remand detention.<sup>7</sup> Thus, in principle, a criminal suspect may be held in police custody for up to 96 hours, before being seen by a judge and transferred to the prison (or released). Due to the lack of a custody register at the National Police Headquarters (see paragraph 12), it remained unclear as to how long criminal suspects were usually kept in police custody in practice.

9. As regards the deprivation of liberty of persons for other reasons than suspicion of a criminal offence, the relevant legislation was revised in July 2007. According to the new Section 24h of the Law on the Police, persons may be taken into custody when they pose a danger to themselves or to others or a serious threat to public safety and order (for a maximum of 24 hours). In addition, persons may be deprived of their liberty by the police for identification purposes (for an unspecified duration).<sup>8</sup> Further, foreign nationals may be held in police custody under aliens legislation, for a maximum of 24 hours for identification purposes or for up to 96 hours pending the judicial review of their detention pending deportation (prior to their transfer to the State Prison; see paragraph 25).<sup>9</sup>

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<sup>5</sup> The amendments entered into force on 1 January 2008. On 20 September 2007, the Parliament (*Landtag*) adopted a new Law on the Execution of Sentences (*Strafvollzugsgesetz* – StrVG), see paragraph 27.

<sup>6</sup> Either on the basis of a detention order or arrest warrant issued by the investigative judge (Sections 127 and 128, paragraph 1, of the StPO) or if the person concerned has been apprehended *in flagrante* or in the event of an emergency (*Gefahr in Verzug*) (Section 129, paragraph 1, of the StPO).

<sup>7</sup> Section 130 of the StPO.

<sup>8</sup> Section 24 of the Law on the Police.

<sup>9</sup> Sections 57 to 60 of the Aliens Law.

## **2. Ill-treatment**

10. The CPT is pleased to note that, in contrast to the 2007 visit, its delegation heard no allegations – and found no other indications – of excessive use of force or other forms of physical ill-treatment of persons detained by police officers.

11. That said, the CPT has misgivings about the practice of police officers occasionally wearing masks when effecting an apprehension. The Committee considers 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 Committee recommends that the Liechtenstein authorities take steps to ensure that the above-mentioned precepts are effectively implemented in practice.**

## **3. Safeguards against ill-treatment**

12. The CPT is very concerned by the fact that, contrary to the situation found during previous visits, a custody register no longer existed on paper at the National Police Headquarters and that the officer on duty was not able to produce any electronic custody register. Thus, the delegation was not in the position to fully assess the implementation in practice of the fundamental safeguards against ill-treatment.

In the CPT's view, every police establishment should have a comprehensive custody register in which all aspects of custody and all measures taken in connection with it are recorded in such a way that they can be retrieved retrospectively (on paper or in electronic form) by the police authority and inspection bodies, in particular as regards the implementation in practice of fundamental safeguards. This register should include the following information: the name of the person concerned, when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when he/she was informed of his/her rights; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of the consular services; when transferred; when brought before a prosecutor or the judge; when remanded or released. The register should include all instances of persons deprived of their liberty at the police establishment for whatever reason.

**The Committee recommends that a custody register (electronically or on paper) be immediately re-established at the National Police Headquarters, in the light of the preceding remarks.**

13. The CPT welcomes the fact that, pursuant to the new Section 128a of the StPO, persons who have been apprehended (*festgenommen*) by the police are now entitled to notify a family member or trusted person “upon apprehension or immediately afterwards”. Further, the right of notification of custody is now also formally guaranteed to persons who have been taken into custody under the Police Law.<sup>10</sup> As far as the delegation could ascertain, persons detained by the police were usually offered the possibility to notify a family member or trusted person without delay.

14. Regrettably, the law does not expressly extend the right of notification of custody to persons who are taken to a police establishment for identification purposes.<sup>11</sup> **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.**

15. Further, the delegation was informed that the right of notification of custody may be delayed if it was considered that such notification could jeopardise the ongoing investigation. In practice, such decisions were taken by the police investigator handling the criminal case.

In this regard, the CPT wishes to recall that restrictions on the right of notification should be surrounded by appropriate safeguards. In particular, any delay should be recorded in writing together with the reasons and require the express approval of a senior police officer unconnected with the case at hand or a prosecutor. **The Committee recommends that the Liechtenstein authorities take the necessary steps to ensure that these precepts are effectively implemented in practice.**

16. The CPT wishes to recall that the right of access to a lawyer as from the outset of deprivation of liberty is a fundamental safeguard against ill-treatment. The possibility for persons to have rapid access to a lawyer will have a dissuasive effect upon those minded to ill-treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

In this regard, the Committee notes that Section 128a of the StPO stipulates that apprehended persons have the right to *notify* a lawyer as from the outset of his/her deprivation of liberty or immediately afterwards.

Most of the detained persons interviewed by the delegation indicated that they had been offered the possibility to contact a lawyer whilst in police custody (including prior to the first questioning), and no complaints were received that requests to have a lawyer present during questioning had been denied by police officers.

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<sup>10</sup> Section 24h, paragraph 4, of the Law on the Police.

<sup>11</sup> Under Section 24 of the Law on the Police.

17. Notwithstanding that, it is regrettable that the right to benefit from the assistance of a lawyer, i.e. to meet a lawyer and to have a lawyer present during police questioning, is still not legally guaranteed as from the outset of deprivation of liberty but only from the moment the person concerned has formally acquired the status of an accused (*Beschuldigter*),<sup>12</sup> as opposed to that of a criminal suspect (*Verdächtiger*).<sup>13</sup> Further, the right of access to a lawyer as such does not apply to persons who have been apprehended by the police for identification purposes or taken into custody under Section 24h of the Law on the Police.

18. Moreover, it is a matter of concern that the amended StPO still provides for the possibility of supervising conversations between a detained person and his/her lawyer (for up to one month).<sup>14</sup> In addition, the presence of a lawyer may be denied during questioning, “in so far as it is considered necessary to prevent the investigation or the gathering of evidence from being adversely affected by the lawyer’s presence”.<sup>15</sup>

In this regard, the CPT must stress that its objective of guaranteeing an effective right of access to a lawyer is to prevent ill-treatment rather than ensuring due process or the right to defence. In the CPT’s experience, it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest. The CPT does acknowledge that the legitimate interests of the police investigation may, exceptionally, justify a delay, for a certain period, in a detained person’s access to a lawyer of his/her choice. However, as stressed in the report on the 2007 visit, there can be no reasonable justification for the right to talk to a lawyer in private and to have a lawyer present during questioning being totally denied during the period in question. The CPT also wishes to recall that the European Court of Human Rights has emphasised repeatedly the importance of persons deprived of their liberty having a lawyer present during police questioning.<sup>16</sup>

If, exceptionally, access of a detained person to the lawyer of his/her own choice is delayed or denied, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged.

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 deprived of their liberty, as from the moment 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.**

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<sup>12</sup> According to Section 23, paragraph 1, of the StPO, a person suspected of having committed a criminal offence acquires the status of an accused once a request to initiate a criminal investigation has been submitted.

<sup>13</sup> See Section 24, paragraph 1, of the StPO.

<sup>14</sup> According to Section 30, paragraph 3, of the StPO, the investigating judge may decide, under the circumstances listed in the same provision, that conversations between a detained person and his/her lawyer be monitored by the judge or by another person designated by the latter (for a period of up to one month).

<sup>15</sup> See Section 147, paragraph 2, of the StPO, which expressly refers to questioning by the investigating judge. This provision is also being applied to police questioning.

<sup>16</sup> See, for example, the judgments of the European Court of Human Rights in the cases of *John Murray v. the United Kingdom* (application no. 18731/91; 8 February 1996); *Salduz v. Turkey* (application no. 36391/02; 27 November 2008); *Shabelnik v. Ukraine* (application no. 16404/03; 19 February 2009); *Pishchalnikov v. Russia* (application no. 7025/04; 24 September 2009); *Dayanan v. Turkey* (application no. 7377/03; 13 October 2009).

20. The CPT wishes to stress again that the existence of the right of access to a lawyer can only be considered to be an effective safeguard against ill-treatment if persons in police custody who are not in a position to pay for a lawyer benefit from a fully-fledged system of legal aid. If this is not the case, the right of access to a lawyer will remain, in many cases, purely theoretical.

It is a positive development that all persons detained by the police were offered a telephone conversation with a lawyer free of charge through the 24-hour hotline of the Bar Association (*Rechtsanwaltlicher Journaldienst*).

However, indigent persons could not benefit from the presence of a lawyer during police questioning. The information sheet for detained persons which was in use at the time of the visit explicitly mentioned that the costs of a lawyer's assistance had to be borne by the detainee him/herself. According to this information sheet, the assistance of a free-of-charge lawyer could only be requested once the judge had decided that the person concerned had to be remanded in custody. An additional specific information sheet of the Bar Association similarly mentioned that (only) the initial counselling by a lawyer over the telephone was free of charge.

**The CPT therefore 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.**

21. The delegation received no complaints from detained persons regarding access to a doctor during their stay at the National Police Headquarters. In the information sheet on the rights of detained persons (see paragraph 22) it is also explicitly indicated that every detained person is entitled to a medical examination free of charge and to have another doctor of one's own choice present during that examination (at the expense of the person concerned).

22. The CPT is pleased to note that an information sheet (*Informationsblatt Freiheitsentzug*) setting out the rights of detained persons in an easily understandable manner is now available at the National Police Headquarters in various languages, as recommended by the Committee in previous visit reports, in addition to the specific information sheet on the 24-hour hotline of the Bar Association referred to in paragraph 20. The information gathered during the visit suggests that both forms were usually given to detained persons upon their arrival at the National Police Headquarters.

That said, it is a matter of concern that persons detained under police legislation (such as persons suffering from a mental disorder) and persons apprehended for identification purposes were usually not informed of their rights.

**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.**

23. As regards juveniles, the CPT is concerned that, despite the specific recommendation made by the Committee in the report on the 2007 visit, juveniles may still be subjected to police questioning and requested to sign statements without the benefit of the presence of either a lawyer or a trusted person.

Whilst acknowledging the existence of certain additional safeguards for juveniles (e.g. mandatory notification of parents and entitlement to have a trusted person present during questioning),<sup>17</sup> the CPT wishes to stress once again that in order to effectively protect this particular age group, the onus should not be placed on the juvenile to request the presence of a lawyer or trusted person. Such a presence should be obligatory.

**The Committee therefore reiterates its recommendation that the Liechtenstein authorities take the necessary steps to ensure that detained juveniles are not subjected to police questioning or required to sign any statement related to the offence of which they are suspected without the presence of a lawyer and, ideally, a trusted adult. The relevant legislation should be amended accordingly.**

#### **4. Conditions of detention**

24. The National Police Headquarters, which is located in the same building as the State Prison, is the only establishment in Liechtenstein where persons may be held in police custody. It comprises one multiple-occupancy custody cell (28 m<sup>2</sup>) as well as one (single-occupancy) security cell, the material conditions of which remained satisfactory.<sup>18</sup>

The Committee welcomes the fact that the capacity of the multiple-occupancy custody cell has been further reduced to six places, and that this capacity has reportedly not been exceeded in recent years.

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<sup>17</sup> Sections 21a and 24 of the JGG.

<sup>18</sup> See also paragraph 26 of the report on the 2007 visit (CPT/Inf (2008) 20).



## **B. Vaduz State Prison**

### **1. Preliminary remarks**

25. The State Prison in Vaduz was previously visited by the CPT in 1993, 1999 and 2007. Initially set up as a remand prison, the prison also holds sentenced prisoners, in principle those with short sentences of up to two years, in order to facilitate frequent contact with their families. All other sentenced persons – usually about 8 to 10 – serve their term in neighbouring countries, mainly in Austrian establishments on the basis of a bilateral treaty between Liechtenstein and Austria. Since 2012, a few prisoners have also been transferred to a nearby open prison (Saxerried Prison) in Switzerland, in the framework of a pilot project. Occasionally, the State Prison also accommodates foreign nationals detained under aliens legislation. In very exceptional circumstances, juveniles are also held in the establishment.

26. Having been designed as a remand prison, the State Prison has neither the space nor the resources to provide a suitable environment for work and other activities, in particular for sentenced prisoners. The Liechtenstein authorities are well aware of this problem, and for several years possible solutions have been considered.<sup>19</sup> The delegation was informed that, in this context, a working group, composed of representatives of the Ministry of Justice, the police, the Social Welfare Authority (*Amt für Soziale Dienste*), the prison management, the judiciary and the probation service (*Bewährungshilfe*), was set up at the beginning of 2016, with the aim of making suggestions for the future execution of sentences in the country. The working group is expected to present its final report to the Government by the end of October 2016.

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

27. Since the CPT's last visit in 2007, the legal framework governing the execution of sentences and remand detention have undergone a complete overhaul with the entry into force on 1 January 2008 of a new Law on Execution of Sentences (*Strafvollzugsgesetz - StrVG*) and new House Rules<sup>20</sup> for the prison.

28. As regards the detention of foreign nationals under aliens legislation, relevant provisions are contained in a new Aliens Law (adopted in September 2008). Section 62 of the law stipulates that immigration detainees shall not be accommodated together with sentenced or remand prisoners, that they should as far as possible be offered suitable activities and that they shall be provided with the health care required by their state of health.

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<sup>19</sup> An earlier plan to enlarge the prison had been rejected by referendum in 2004.

<sup>20</sup> In accordance with Section 23 of the StrVG, the House Rules were drafted by the prison management and approved by the Government.

That said, it is regrettable that in all other respects, in particular as regards contacts with the outside world, immigration detainees were subjected to the same rules as prisoners. In this regard, the CPT wishes to stress that conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. In particular, they should have every opportunity to remain in meaningful contact with the outside world (including frequent opportunities to make telephone calls and receive visits) and should be restricted in their freedom of movement within the detention facility as little as possible.

**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 to 100 of its 19<sup>th</sup> General Report (CPT/Inf (2009) 27).**

29. Since the 2007 visit, the official capacity of the State Prison has been further reduced from 22 to 20 places. In all other respects, the description of the establishment provided in the report on the 1993 visit remains broadly valid.<sup>21</sup>

At the time of the visit, the prison was accommodating seven inmates, all of whom were foreign nationals: six male prisoners (one sentenced and five on remand), and one woman who was held in detention pending extradition. There were no juveniles and no immigration detainees. In 2015, inmates stayed on average 57 days in the prison.

## **2. Ill-treatment**

30. As was the case during previous visits, the delegation received no allegations of ill-treatment of inmates by prison officers. On the contrary, the atmosphere in the prison appeared to be relaxed, and inmates spoke positively about the manner in which staff interacted with them.

## **3. Conditions of detention**

31. Material conditions of detention remained on the whole very good. All inmates were accommodated in spacious and clean single cells which were well-equipped (including with a sanitary annexe).

32. As regards the regime, prisoners who did not have to be separated from other prisoners (see paragraph 37) could spend up to 6 ½ hours per day outside their cells. During that time, male inmates generally had access to a communal room/library and to a well-equipped fitness room. Female inmates could use an exercise bike in their small wing.<sup>22</sup> All the prisoners could borrow books from the small library and a visiting pastor regularly organised religious activities, including for prisoners of non-Christian faith.<sup>23</sup> Inmates could also use a computer (without internet access) for typing correspondence. At the time of the visit, most inmates were offered at least some paid occupation, although, in some cases, this was limited to a few hours per week.<sup>24</sup> However, no education and barely any other activities were on offer.

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<sup>21</sup> CPT/Inf (95) 7, paragraphs 36 and 37.

<sup>22</sup> Consisting of two single cells and a shared entrance/common room.

<sup>23</sup> In addition, an imam, rabbi or representatives of other religions could be invited upon the prisoners' request.

<sup>24</sup> Work offered included mainly packaging, basic woodwork, thermoplastic moulding, cooking, laundry and cleaning.

The CPT acknowledges the challenges faced by the management in providing an adequate regime for all inmates in an establishment of limited size intended to accommodate inmates of different categories, many of whom only stayed in the prison for short periods. Against this background, it appreciates the efforts made to provide the few inmates individually with opportunities to work according to their possibilities and to compensate for the limited regime by allowing frequent access to the outdoor exercise yard and the fitness room.

That said, the existing arrangements were still insufficient, in particular for inmates held in the establishment for prolonged periods. The aim should be to ensure that all prisoners spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities of a varied nature (e.g. work, education and recreation/association) tailored to their needs. The longer the term of detention, the more varied these activities should be.

**The Committee encourages the Liechtenstein authorities to pursue their efforts to expand the offer of activities for all prisoners at the State Prison, in the light of the preceding remarks.**

33. Whilst acknowledging that in practice inmates were not compelled to take outdoor exercise, the CPT is surprised to note that, according to the StrVG<sup>25</sup> and the House Rules,<sup>26</sup> exercise in the open air was mandatory for all inmates on days when they did not work outside. According to the House Rules, exceptions could only be made for medical reasons certified by the prison doctor. The CPT would like to stress that inmates should never be compelled to take outdoor exercise. **This anachronistic rule should be abolished.**

34. Male inmates had access to a relatively spacious outdoor exercise yard where they could play table tennis, table football and outdoor chess, while female prisoners and inmates who had to be separated from the rest of the prison population could only use a bare concrete yard on the prison roof. The latter was surrounded by high walls (some 4m) which obstructed any outside view and lacked any equipment which could make it more inviting (apart from a chair). **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.**

35. Moreover, it is also regrettable that neither of the two outdoor exercise yards was equipped with shelter against inclement weather. **Steps should be taken to remedy this shortcoming.**

36. At the time of the visit, only one female prisoner was being held in the State Prison. The delegation was informed that such a situation was not uncommon. The aforementioned prisoner spent almost the whole day on her own. She had been offered some work (packaging) and had access to the roof yard for one to 1½ hours per day. Her human contact was limited to occasional contacts with prison officers and visits by her husband and her lawyer.

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<sup>25</sup> Section 40 of the StrVG.

<sup>26</sup> Section 7, paragraph 4.

In a case where only one woman is held in the establishment, she may *de facto* be subjected to a regime akin to solitary confinement. **The CPT therefore recommends that the Liechtenstein authorities continue their efforts to provide female inmates in such cases 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).**

37. However, prisoners who had to be separated from other inmates (which was apparently frequently the case for remand prisoners in the initial phase of their remand detention) spent considerably less time outside their cells. In some cases they were locked in for up to 23 hours per day. The prison management tried to alleviate the effects of such a regime, e.g. by offering more than one hour of outdoor exercise to the inmates concerned. **The CPT encourages the Liechtenstein authorities to step up their efforts to provide purposeful out-of-cell activities also for prisoners under a separation regime.**

#### **4. Health care**

38. The prison does not employ health-care staff. Instead, a medical doctor was contracted by the prison and visited the establishment one afternoon per week. Prisoners could see him or their own doctors (as well as dentists) upon request. There were no other health-care professionals regularly visiting the prison.

39. The CPT is particularly concerned by the fact that, despite the specific recommendation repeatedly made by the Committee after its previous visits, newly-arrived inmates still did not benefit from medical screening upon their admission. The delegation was informed that, in practice, newly-arrived inmates were usually merely spoken to by the doctor on his next regular visit to the prison (i.e. up to one week after the inmate's arrival). In the CPT's view, a systematic medical admission examination is essential, in particular to prevent suicides and the spread of transmissible diseases, as well as for the recording of injuries in good time.

**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.**

40. As regards the recording of injuries, the delegation was informed that not a single person had arrived at the prison in recent years with visible injuries. However, bearing in mind that newly-arrived inmates were not usually subjected to a physical examination upon admission, the aforementioned statement does not necessarily give an accurate picture of the situation. Moreover, from consultations with the prison doctor it transpired that there were no clear guidelines and procedures in place regarding the recording and reporting of injuries.

The CPT wishes to stress that the file drawn up after the medical examination of an inmate – on admission or during imprisonment – should contain:

- i) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries if the inmate is injured). It would also be desirable that photographs be taken of any injuries;
- ii) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);
- iii) the doctor’s observations in the light of i) and ii) above, indicating the consistency between any allegations made and the objective medical findings.

Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made by the inmate (or which, even in the absence of the allegations, are indicative of ill-treatment), the information should be immediately and systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned.

**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.**

41. As regards medical confidentiality, the CPT is concerned that the House Rules stipulate<sup>27</sup> that inmates who wish to see a doctor must indicate the reasons for such a request; the respective forms which prisoners were required to fill in were visible to custodial staff.

**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.**

42. The CPT welcomes the fact that inmates were no longer involved in the distribution of medication to other inmates. The Committee also acknowledges the efforts made by the Liechtenstein authorities to find a viable and safe solution for distributing medication to inmates in the absence of health-care staff. To this effect, a new procedure had been introduced a few weeks before the CPT’s visit: the prison doctor sent his/her prescriptions to the mobile home-care service “*Familienhilfe Liechtenstein*”, a private company which also distributed medication to many patients in the community. “*Familienhilfe Liechtenstein*” then prepackaged the individual doses of medicine for each prisoner. The actual distribution to inmates was, however, still performed by prison staff who had undergone specific training on the distribution of medication (and in particular on preventing the clandestine collection and trade of medication amongst inmates).

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<sup>27</sup> Section 20.

43. The sporadic medical notes on the inmates seen by the doctor at the prison<sup>28</sup> were stored on the prison doctor's personal laptop, which was locked in a cupboard to which only he had the key. The entries were thus only accessible when the doctor was present in the establishment. Moreover, the delegation was informed by the doctor that when he took up his duties (in 2011), no medical notes had been handed over to him and no arrangement was in place to ensure that once his contract with the prison ended, inmates' medical files would remain at the establishment.

**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.**

44. It is a positive development that a psychologist now visited the prison several times per month and that a psychiatrist was always available on call in case of need.

That said, when an inmate of the State Prison was in need of in-patient psychiatric care, the only solution appeared to be a transfer of the person concerned to the psychiatric unit of the General Hospital in Rankweil (Austria). Due to the limited capacity of the latter unit, it was sometimes only after a certain delay that such transfers were organised. The delegation was informed that the Liechtenstein authorities were consulting with the cantonal authorities of Graubünden (Switzerland) about possible access to other secure hospital rooms for inmates of the State Prison.

**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.**

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<sup>28</sup> From 2011 onwards, since the prison doctor had taken up his function.

## 5. Other issues

### a. staff

45. At the time of the visit, the staff of Liechtenstein State Prison comprised the Acting Director, five full-time prison officers (*Vollzugsbeamte*) and six contracted custodial staff working part-time (to the equivalent of 2.5 full-time posts). Custodial staff were former police officers who had received internal on-the-job training and who had the same powers and duties as full-time prison officers. It is a welcome development that one female custodial staff has been recruited.

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

### b. contact with the outside world

46. The CPT welcomes the prison management's policy of allowing prisoners to receive visits and make telephone calls beyond the minimum entitlements provided for by law. In practice, prisoners (who did not have judicial restrictions on outside contacts imposed) could usually receive at least two visits of one hour every week (and in some cases considerably more) and make at least two phone calls per week of a total duration of two hours.

47. That said, some of the existing legal provisions and applicable rules are manifestly too restrictive.

48. Firstly, sentenced prisoners<sup>29</sup> (including juveniles) are only entitled to one ½-hour visit per week (including one visit which may be extended to at least one hour every six weeks), while remand prisoners<sup>30</sup> (including juveniles) are entitled to at least two ½-hour visits per week.

The CPT considers that all prisoners should be entitled to at least one hour of visits every week. The entitlement should be more favourable for juvenile prisoners. **The Committee recommends that the applicable rules be amended accordingly.**

49. Secondly, the CPT is surprised by the fact that, according to the relevant legislation,<sup>31</sup> both sentenced prisoners and remand prisoners are – as a general rule – not allowed to make any telephone calls. In the CPT's view, the existence of such a rule is not acceptable and also incompatible with the European Prison Rules.<sup>32</sup>

**The Committee 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.**

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<sup>29</sup> Section 84 of the StrVG.

<sup>30</sup> Section 137, paragraph 1, of the StPO.

<sup>31</sup> Section 88 of the StrVG stipulates that sentenced prisoners shall be allowed to make telephone calls to a relative, lawyer or public institution for justified reasons (*aus berücksichtigungswürdigen Gründen*). According to Section 12 of the House Rules, this rule also applies to remand prisoners, and all prisoners who wish to make a telephone call are required to document (*bescheinigen*) the existence of a justified reason. In the case of remand prisoners, the approval of the investigating judge is also required (see paragraph 50).

<sup>32</sup> See Rules 24.1 and 99 and the Commentary on these Rules.

50. Moreover, the Committee notes that, according to the relevant legislation, remand prisoners have to request authorisation from the competent court for every single visit or telephone call. In this regard, the CPT considers that remand prisoners should be entitled to receive visits and make telephone calls as a matter of principle, rather than these being subject to authorisation by a judge. This precept is also set out in the European Prison Rules.<sup>33</sup> Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation and be applied for a specific period of time. If it is considered that there is an ongoing risk of collusion, particular visits (or telephone calls) can always be monitored.

**The CPT recommends that the Liechtenstein authorities take steps to ensure that the rules governing remand prisoners' contacts with the outside world are revised, in the light of the preceding remarks.**

51. Finally, bearing in mind the generally high proportion of foreign nationals at the State Prison and the high costs of international telephone calls, **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)**. Such means of communication are being increasingly used in other European countries and can be made secure with appropriate staff supervision.

c. discipline

52. According to the StrVG,<sup>34</sup> the most severe disciplinary sanction which may be imposed on inmates (including juveniles) is solitary confinement (*Hausarrest*) for up to four weeks.

Whilst acknowledging that disciplinary sanctions have hardly ever been imposed on inmates in recent years,<sup>35</sup> the CPT wishes to stress that any form of isolation may have a detrimental effect on the physical and/or mental well-being of inmates, and even more so vis-à-vis juveniles. Therefore, it considers the maximum possible period of solitary confinement of four weeks for adult inmates to be excessive. Given the potentially very damaging effects of solitary confinement on the mental and/or physical well-being of the prisoners concerned, this period should be no more than 14 days for a given offence, and preferably lower.<sup>36</sup>

As regards juveniles, the CPT observes an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles. Particular reference should be made to the United Nations Standard Minimum Rules on the Treatment of Prisoners (*Nelson Mandela Rules*) which have recently been revised by a unanimous resolution of the General Assembly and which explicitly stipulate in Rule 45 (2) that solitary confinement shall not be imposed on juveniles.<sup>37</sup> The Committee fully endorses this approach. **The Committee recommends that the Liechtenstein authorities take steps to ensure that the above-mentioned precepts are effectively implemented in practice and that the relevant legal provisions are amended accordingly.**

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<sup>33</sup> See Rules 24.1 and 99 and the Commentary on these Rules.

<sup>34</sup> Sections 103 and 108 of the StrVG.

<sup>35</sup> The last incident involving the imposition of a disciplinary sanction (solitary confinement for two weeks) occurred in 2014.

<sup>36</sup> See paragraph 56(b) of the 21<sup>st</sup> General Report on the CPT's activities.

<sup>37</sup> See also Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly Resolution A/RES/45/113, Annex).



53. The CPT is concerned to note that the sanction of solitary confinement usually entails a total prohibition on contact with the outside world.<sup>38</sup> **The Committee 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.**<sup>39</sup>

54. The information gathered during the visit suggests that disciplinary procedures were usually carried out in accordance with the relevant legislation.<sup>40</sup> However, according to the law, a written copy of the decision only had to be given to inmates upon their request. In the CPT's view, a written copy should be given out automatically and the inmate concerned should confirm reception of the decision by means of a signature.

**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.**

55. According to Section 111 of the StrVG, the sanction of solitary confinement may not be implemented in case the doctor considers that the measure would be detrimental to the prisoner's health. In this regard 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.**

d. security-related issues

56. The delegation was informed that only very rarely had prisoners been placed in the establishment's observation cell and that means of mechanical restraint were no longer applied.<sup>41</sup> However, it could not gain a clear picture of the situation, since a special register on its use had still not been introduced, despite the specific recommendation repeatedly made by the Committee after previous visits.

**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 circumstances of the case, the reasons for placement; date and time of placement; name of the persons who ordered the placement; date and time of the end of placement; visits by health-care staff).

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<sup>38</sup> Section 108, paragraph 2, of the StrVG.

<sup>39</sup> See also Rule 60.4 of the European Prison Rules and the Commentary on that Rule.

<sup>40</sup> See Section 110 of the StrVG.

<sup>41</sup> For further details, see paragraph 26 of the report on the 2007 visit (CPT/Inf (2008) 20).

57. Moreover, it is matter of concern that inmates were routinely handcuffed during transportation to the court or outside medical facilities (e.g. dentist), which also appeared to be in contradiction to the relevant provision of the Law on the Police.<sup>42</sup> **In the CPT's view, handcuffing during transportation should be resorted to only when the risk assessment in the individual case clearly warrants it.**

e. information for inmates and complaints procedures

58. Upon their arrival at the prison, inmates received relevant information including a copy of the prison's House Rules. The latter were also available in a range of languages<sup>43</sup> and newly-admitted inmates were usually given a copy of them.

59. According to the relevant legislation,<sup>44</sup> prisoners have the right to lodge complaints to the director of the prison, against any decision taken or the behaviour of staff, which affect their rights. In addition, complaints can be lodged with the Complaints Commission for Administrative Matters (*Beschwerdekommision für Verwaltungsangelegenheiten*) regarding decisions taken by the Director.

That said, it is regrettable that the House Rules contain only very rudimentary information on the existing complaints procedures. Section 17 simply stipulates that "After breakfast has been served, written or oral requests [...] or complaints (Section 114, paragraph 2, of the Law on Enforcement of Sentences) may be made by inmates to the staff member in charge." No information is provided regarding the modalities of lodging such complaints, i.e. who the relevant complaints bodies are and how complaints can be communicated on a confidential basis.

**The Committee 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).**

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<sup>42</sup> Section 27a of the Law on the Police specifies the circumstances under which handcuffs may be applied to a person in a given case.

<sup>43</sup> Including Albanian, English, French, Italian, Polish, Russian, Serbian and Turkish.

<sup>44</sup> Section 114 (2) of the StrVG.

**C. Vaduz State Hospital**

60. The delegation paid a brief visit to the State Hospital in Vaduz, in order to examine the conditions under which detained persons may be held there. The Hospital's Psychiatric Unit had been closed down a few years previously and thus involuntary civil patients are no longer accommodated at Liechtenstein State Hospital.

61. The hospital still had a secure room<sup>45</sup> which was on rare occasions used for accommodating prisoners or persons detained by the police. During medical examinations of detained persons held in the secure room at Liechtenstein State Hospital,<sup>46</sup> police officers are reportedly no longer present, as was recommended by the Committee in the report on its last visit. The CPT welcomes this development.

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<sup>45</sup> See description in the report on the last visit, CPT/Inf (2008) 20, paragraph 41.

<sup>46</sup> The secure room is described in paragraph 41 of the CPT's report on its 2007 visit (CPT/Inf (2008) 20).

**D. Situation of persons subjected to a court-ordered preventive measure**

62. The legislation governing the imposition by a court of preventive measures (*Maßnahmenvollzug*) has remained unchanged since the CPT's last visit. It is recalled that persons who have "committed a criminal offence [...] under the influence of a mental disorder" may be placed by court order for an unlimited period in an institution for mentally disturbed offenders (*Anstalt für geistig abnorme Rechtsbrecher*).<sup>47</sup> Similarly, involuntary placement in a specialised institution may be ordered in respect of substance dependent persons who have committed a criminal offence under the influence of intoxicating or narcotic substances (*entwöhnungsbedürftige Rechtsbrecher*),<sup>48</sup> or in respect of persons who are considered to be "dangerous recidivists" (*gefährliche Rückfalltäter*).<sup>49</sup> According to the law, regular *ex officio* reviews of the involuntary forensic placement decisions are to be carried out by the competent court at least once a year (for involuntary placement under Sections 21 and 23 of the StGB), or every six months (for measures under Section 22 of the StGB).<sup>50</sup>

63. In the absence of appropriate establishments on the territory of Liechtenstein, all measures referred to above are usually implemented in specialised establishments in Austria, in accordance with a bilateral treaty concluded with Austria in 1982.<sup>51</sup> During the delegation's consultation with senior officials from the Ministry of Home Affairs, Justice and Economic Affairs, it could not be finally clarified whether, at the time of the visit, any person was being held in a specialised institution or prison in Austria, for preventive measures.

**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 of the 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.**

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<sup>47</sup> Section 21, paragraph 1, of the StGB regulates the placement of a person who has committed an offence and who, while having been under the influence of a serious psychiatric or psychological abnormality at the time when the offence was committed, cannot be considered criminally responsible. According to Section 21, paragraph 2, such a measure may under certain conditions also be imposed in cases where the person concerned has not been declared criminally irresponsible.

<sup>48</sup> Based on Section 22 of the StGB, which regulates the placement of drug-addicted persons who have committed a criminal offence in a state of intoxication, in a special unit for treatment purposes for a maximum period of two years.

<sup>49</sup> Based on Section 23 of the StGB, which regulates the placement of recidivists who are criminally fully responsible for the crime(s) they have committed and who are considered to be a danger to society; the maximum period for such detention is ten years and cannot be extended.

<sup>50</sup> See Section 25, paragraphs 3 and 4, of the StGB.

<sup>51</sup> See paragraph 25.

## E. Involuntary placement of a civil nature

### 1. Preliminary remarks

64. Since the 2007 visit, the legal provisions governing involuntary placement in psychiatric or social welfare institutions have undergone only minor changes.<sup>52</sup> It is recalled that, according to the Law on Social Welfare (*Sozialhilfegesetz* – SHG),<sup>53</sup> the Liechtenstein Court may, under certain preconditions, order the involuntary placement of persons with mental illnesses or mental disabilities, or who suffer from substance dependence or are severely neglected (*verwahrlost*), in an appropriate care institution.

65. The delegation was informed that in the absence of appropriate establishments in Liechtenstein, all persons in respect of whom such placements were necessary were accommodated in establishments in Switzerland or Austria. In 2014 and 2015 respectively, 38 and 47 such placements had taken place, the vast majority of them in the context of an emergency procedure in cases of imminent danger (*Gefahr im Verzug*).<sup>54</sup>

As regards 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.<sup>55</sup> 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 on these points.**

66. Further, the delegation was informed that, despite the above-mentioned agreements with the receiving hospitals, the involuntary placement of persons abroad was not sufficiently regulated, as it was generally unclear if the Liechtenstein Court's placement decision was legally valid abroad.<sup>56</sup>

Therefore, in March 2016, the Government set up a multidisciplinary working group, composed of representatives of the relevant ministries, the National Police and the Liechtenstein Court to examine possible solutions to the legal uncertainties related to involuntary placements abroad. Based on the working group's final report, the Government decided in September 2016 to initiate negotiations with the Swiss authorities with a view to clarifying outstanding legal questions through a bilateral agreement. A similar agreement might be concluded at a later stage with the Austrian authorities.<sup>57</sup> In this regard, reference is made to the recommendation in paragraph 72.

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<sup>52</sup> The main legal amendment concerns the bodies entitled to apply to the court for a person's involuntary placement according to Section 12, paragraph 1, of the SHG. Until 2012, in addition to the Chief Public Health Doctor (*Amtsarzt*) and the Office for Social Services (*Amt für Soziale Dienste*), the Welfare Commission of the person's municipality had also been entitled to file such applications.

<sup>53</sup> See Section 11, paragraph 1, of the SHG.

<sup>54</sup> See Section 12, paragraph 2, of the SHG.

<sup>55</sup> Such agreements existed with hospitals in Switzerland (Littenheid Psychiatric Clinic and hospitals in the Cantons of Graubünden and St Gallen) and Austria (Feldkirch, Hohenems and Rankweil).

<sup>56</sup> In Austria, decisions on involuntary placement issued by the Liechtenstein Court were usually not recognised by the relevant authorities. Therefore, a new placement procedure was usually carried out under Austrian law. In Switzerland, such court decisions taken by the Liechtenstein Court were recognised only in some Swiss Cantons, but not in others.

<sup>57</sup> As recommended in the working group's final report.

## 2. Initial placement and discharge procedures

67. The main features of the ordinary involuntary placement and retention (*Zurückbehaltung*) procedure,<sup>58</sup> as well as of the emergency placement procedure,<sup>59</sup> were described in the report on the 2007 visit.<sup>60</sup> It is recalled that, once an emergency placement has been ordered by a doctor, the law stipulates that the court must decide within five days about the lawfulness of such placement. In practice, the court subsequently initiated the ordinary involuntary placement procedure and took a second decision on the need for continued involuntary placement about two weeks after the emergency placement, unless the person concerned had been released or agreed to his/her placement in the meantime (which was reportedly frequently the case).

68. As regards the emergency placement procedure,<sup>61</sup> the CPT has misgivings that, despite the specific recommendation made after the previous visit,<sup>62</sup> the persons concerned were not heard by a judge in the context of the court's decision on the lawfulness of such placements. This was partly due to the fact that the persons concerned were transferred to an institution in Switzerland or Austria only a few hours after the doctor had issued the placement order.<sup>63</sup> A judicial hearing<sup>64</sup> would in practice only take place – in the rare cases where continued involuntary placement was necessary – before the final placement decision was taken.

**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.<sup>65</sup>**

69. Moreover, the court usually determined a person's emergency placement “until his/her state allows for release” and thus left it to the receiving establishment to decide when the person would be discharged. The only time-limit expressly provided for by law was the provision<sup>66</sup> that any involuntary placement (or retention) could be ordered for a maximum of one year.<sup>67</sup> Whilst acknowledging that, in practice, the court usually carried out an ordinary involuntary placement/retention procedure within two weeks of the emergency placement whenever necessary, it is a matter of concern that the law does not specify a maximum length for the emergency placement. **The Committee recommends that the necessary steps be taken at the legislative level to remedy this shortcoming.**

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<sup>58</sup> Section 12, paragraph 1, of the SHG.

<sup>59</sup> Section 12, paragraph 2, of the SHG.

<sup>60</sup> See paragraph 65 of CPT/Inf (2008) 20.

<sup>61</sup> Section 12, paragraph 2, of the SHG.

<sup>62</sup> CPT/Inf 2008 (20), paragraph 67.

<sup>63</sup> When the court examined the placement decision, the person was thus usually already abroad.

<sup>64</sup> By way of judicial assistance (*Rechtshilfe*) through a judge of the country where the person had been placed.

<sup>65</sup> See also the Committee of Ministers' Recommendation Rec (2004)10 concerning the protection of the human rights and dignity of persons with mental disorder and more particularly to Article 17, paragraph 1 (v), according to which “a person may be subject to involuntary placement only if (...) the opinion of the person concerned has been taken into consideration”.

<sup>66</sup> Section 12, paragraph 3, of the SHG.

<sup>67</sup> The delegation was informed that the court therefore considered any involuntary placement decision to have expired after one year. Any prolongation of the placement beyond one year required a completely new placement procedure to be initiated by either one of the Chief Public Health Doctors or the Office for Social Services according to Section 12, paragraph 1, of the SHG.

70. The law further stipulates that the court's ordinary involuntary placement decision in respect of persons with mental disorders must be based on an expert opinion (*Fachgutachten*).<sup>68</sup> In the CPT's view, such placement decision should also be based on the expertise of a doctor specialised in psychiatry who is independent of the establishment in which the person concerned is placed. From the consultations held by the delegation it remained somewhat unclear to what extent this precept is being implemented in practice.

**The CPT would like to receive further clarification on this point.**

71. The CPT welcomes the fact that, according to the information gathered, the persons concerned had the right to request a review of the involuntary placement/retention decision and had been informed by their legal advisors accordingly.<sup>69</sup>

72. Finally, 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 in person 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.**

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<sup>68</sup> Section 13 of the SHG.

<sup>69</sup> The court always appointed a legal advisor (*Rechtsbeistand*) to assist the person concerned. These advisors were law-school graduates working for a period of six months with the court. They would meet the persons concerned in person in the establishments where the latter were being held.

## F. St Laurentius Nursing Home

### 1. Preliminary remarks

73. St Laurentius Nursing Home, visited for the first time by the CPT, is located in the town of Schaan and was opened in 2005. It is run by the public law foundation “Liechtensteinische Alters- und Krankenhilfe” (LAK). With a total capacity of 48 places, St Laurentius Nursing Home was accommodating 47 residents at the time of the visit. They were accommodated in a three-storey building which comprised one ward per floor. The establishment mainly provided care for persons in the final stage of their lives, including palliative care. Most of the residents stayed at the home for two to 2 ½ years.

74. The delegation focused its visit exclusively on the ward on the ground floor (*geschützter Bereich*), the only one which was on occasion locked in order to prevent one or more residents who were considered prone to abscond (*Weglauftendenz*) from the establishment. The residents concerned were thus possibly *de facto* deprived of their liberty (see paragraph 84).

Of the 16 residents of the ground floor ward, five were men and eleven women, most of them in their eighties or nineties, with somatic diagnoses and/or dementia. Four of them had a court-appointed guardian (*Sachwalter*).

The delegation was informed by the home’s management that residents were never involuntarily placed at St Laurentius on the basis of Section 12 of the SHG. Whenever such placement was considered necessary, the person concerned would be transferred to an establishment abroad (see paragraph 65).

In practice, all the residents had been admitted to the home voluntarily or with the approval of their guardians. In the latter case, the placement also had to be validated by the competent court.<sup>70</sup>

75. At the outset, the CPT wishes to highlight that its delegation received no allegations and found no other indications of ill-treatment of residents by staff at the St Laurentius Nursing Home. On the contrary, the atmosphere was very relaxed, and the delegation gained a favourable impression of the staff’s dedicated and caring attitude.

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<sup>70</sup> Section 284a, paragraph 2, of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*).



## 2. Living conditions and care

76. Living conditions in the St Laurentius Nursing Home were excellent. All residents had spacious individual rooms, with large windows and a balcony. Each room was equipped with an individual bathroom with toilet, shower and wash-basin adapted for persons of restricted mobility. Residents had been provided with a lockable bed-side cupboard and were allowed to decorate their rooms, including with their own furniture. Furthermore, the ward had inviting communal areas and easy access to outdoor facilities (a terrace and a garden).

77. The delegation also gained a favourable impression of the care provided, which was based on an individualised approach and took the special needs of persons with dementia into account. Residents' wishes seemed to be well respected.

Every resident had an individual care plan, which was established after a detailed assessment, and regularly reviewed. At least once per year, the resident's care and treatment was evaluated by a round-table (*bewohnerzentriertes Gespräch*) involving the resident and his/her reference nurse (*Bezugspfleger*) and possibly other health-care staff, a doctor, the resident's next-of-kin, and, if applicable, the resident's guardian.<sup>71</sup>

78. Various activities and events were offered to residents who were able to and interested in participating in them (e.g. singing, lottery, listening to live music) and residents were given support in order to maintain their usual everyday activities for as long as possible. For this purpose, for five days a week, a therapist offered individual assistance, for instance in reading newspapers, cooking, dishwashing and ironing. Residents could also use a well-equipped bathroom for persons of reduced mobility and were, when necessary, supported by staff in using it.

79. Health care was primarily provided by the residents' personal doctors (*Hausärzte*), in addition to a doctor contracted by the nursing home (*Heimarzt*). The nursing home further employed for the ground floor ward one full-time nurse and four part time-nurses (to the equivalent of 2.6 posts) as well as four other qualified care staff (to the equivalent of 2.8 posts).

The nursing staffing levels appeared to be somewhat stretched, considering that all residents needed assistance in order to eat or to perform other basic functions. Although generally an equivalent of 0.4 nursing staff were employed per bed, the night-duty shift usually consisted of only two staff members (one of whom was a qualified nurse). **The CPT trusts that the Liechtenstein authorities will review the staffing levels at St Laurentius Nursing Home, in the light of the preceding remarks.**

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<sup>71</sup> The delegation was informed that in practice, however, the residents were often either not able to participate due to their state of health or did not wish to participate and delegated their participation to their family members.

### 3. Movement-restricting measures

80. The internal guidelines<sup>72</sup> in place at the St Laurentius Nursing Home provided the possibility to apply so-called “movement-restricting measures” (*bewegungseinschränkende Massnahmen*). These measures included, *inter alia*, preventing the resident from leaving the ward by locking the ward’s exit by means of a key code (*codegesicherter Ausgang*; see paragraph 84). The guidelines also allowed for attaching residents to a wheelchair with a seat belt and the installation of rails on the sides of the bed (*Bettgitter*).<sup>73</sup>

81. According to the above-mentioned guidelines, residents able to give their valid consent (*urteilsfähig*) should only be subject to movement-restricting measures with their written consent. Residents who were unable to give their consent (*urteilsunfähig*) could be subjected to such measures based on the written approval of the resident’s doctor and - if they had one - of his/her guardian (*Sachwalter*). In emergency situations, the measures could be ordered independently by a qualified nurse. However, the written consent or doctor’s approval should be produced within 24 hours (of the application of the measure), and at the latest by the following working day.

The guidelines further stipulate that recourse to movement-restricting measures should be reduced to a minimum and that their application should be documented and regularly reviewed.<sup>74</sup>

82. The CPT notes that, in practice, the movement-restricting measures applied at St Laurentius consisted of locking the ward’s exit door by means of a key code, the installation of rails on the sides of the bed (*Bettgitter*) or attaching a resident in a wheelchair with a seat belt.

That said, the delegation was unfortunately not able to obtain a clear picture of the frequency of their use and the procedure followed in practice, as decisions and dates of decisions concerning movement-restricting measures were often not properly documented.<sup>75</sup>

**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 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.**

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<sup>72</sup> The “Guidelines for the application of movement-restricting measures” (*Richtlinie Bewegungseinschränkende Massnahmen*) are applicable in four social care homes in Liechtenstein managed by the “*Liechtensteinische Alters- und Krankenhilfe*” (LAK).

<sup>73</sup> Both measures were intended to prevent falls.

<sup>74</sup> According to the above-mentioned guidelines, movement-restricting measures should be reviewed after a maximum of three months (and “very restrictive measures much earlier”).

<sup>75</sup> For example, the head nurse of the ground floor ward was unable to produce records about the most recent case of application of the measure of code-secured closure of the ward. In another case, the computer record indicated a date when a body belt had been applied for the first time, but this was not noted in the file of the resident concerned.

83. It further appeared that in practice, a doctor<sup>76</sup> did not always see the resident when movement-restricting measures were applied. The doctor's approval was sometimes sought by fax (which suggests that the doctor had not seen the resident when agreeing to the measure), and staff reported that the doctor was sometimes asked to sign only on his/her following visit to the nursing home. The delegation further examined the files of two residents for whom a measure had been decided in February and March 2016 respectively, but the doctor's signature was still missing in June.

**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.**

84. As regards other movement-restricting measures, the delegation was informed that, on occasion, the measure of code-secured exit (*codegesicherter Ausgang*) was applied to residents (usually in an advanced stage of dementia) who were considered prone to abscond (*Weglauftendenz*). For those who had been deprived of their legal capacity and had a guardian, the latter had agreed to the measure in writing.

The measure meant in practice that the ward's exit door was being locked, and only residents who had the intellectual capacity to operate a four-digit number code (which was visibly posted on the door) could go out at any time. The residents who were considered prone to abscond did not usually have this capacity and were thus prevented from leaving the establishment. Therefore, they may be *de facto* deprived of their liberty without being offered any safeguards.<sup>77</sup>

The CPT considers that in such cases, an involuntary placement (retention) procedure under the Social Welfare Act or the court procedure for appointing a guardian should be initiated. However, the delegation was informed that this was usually not done. **The CPT recommends that this deficiency be remedied.**

#### 4. Other issues

85. Arrangements for residents' contacts with their families or friends were very good and call for no further comments.

86. It is also positive that a detailed information brochure was given to residents upon arrival, setting out the establishment's routine.

87. However, 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.**

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<sup>76</sup> Which was usually the resident's own doctor (*Hausarzt*), not the doctor employed by the nursing home (*Heimarzt*).

<sup>77</sup> Residents who could not operate the code but were not considered "prone to abscond" could reportedly have the door opened by staff upon their request.

**APPENDIX**

**LIST OF THE NATIONAL AUTHORITIES, OTHER BODIES  
AND NON-GOVERNMENTAL ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. National authorities**

Ministry of Home Affairs, Justice and Economic Affairs

Thomas ZWIEFELHOFER	Deputy Prime Minister and Minister of Home Affairs, Justice and Economic Affairs
Martina BRÄNDLE-NIPP	Head of Legal Department, Aliens and Passport Office
Christian BLANK	Head of Asylum Department, Aliens and Passport Office
Uwe LANGENBAHN	Deputy Police Commissioner
Michael BECK	Acting Director of Vaduz State Prison
Erik PURGSTALLER	Office of Justice, CPT's liaison officer

Ministry of Social Affairs

Mauro PEDRAZZINI	Minister of Social Affairs
Hugo RISCH	Acting Head of the Office of Social Services
Sabine ERNE	Chief Public Health Doctor, Office of Health
Marina JAMNICKI ABEGG	Chief Public Health Doctor, Office of Health

**B. National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention against Torture (OPCAT)**

Franziska GOOP-MONAUNI	Chair of the Prison Supervisory Commission
Isolde KIEBER	Member of the Prison Supervisory Commission
Edmund PILGRAM	Member of the Prison Supervisory Commission

**C. Non-governmental organisations**

Association for Probation Service (*Verein für Bewährungshilfe*)