UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/LIE/3
16 March 2009

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1999

LIECHTENSTEIN* **

[1 December 2008]

* The second report submitted by the Principality of Liechtenstein is contained in document CAT/C/43/Add.4.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

GE.09-41175 (E) 310309

CONTENTS

Foreword

1. Liechtenstein has a long history of strong commitment to the fight against torture and inhuman or degrading treatment or punishment. This includes Liechtenstein's advocacy on behalf of international standards within the framework of multilateral bodies and negotiations. In particular, however, this means implementing the standards conscientiously at home. We are pleased to report that in the reporting period from September 1998 to August 2008, no cases of torture or inhuman or degrading treatment or punishment have been recorded in Liechtenstein.

2. With the conviction that the interplay between external verification and national prevention constitutes an effective means to prevent torture and inhuman or degrading treatment or punishment, Liechtenstein participated actively in the development of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) and ratified it without delay. Liechtenstein's ratification took place on 3 November 2006, and the Optional Protocol entered into force for Liechtenstein on 3 December 2006. In addition to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), a new instrument has thereby been added during the reporting period which specifically is intended to combat and especially also prevent such human rights violations.

3. Liechtenstein values its dialogue with international experts and has in the past always been able to gain new impulses and suggestions from this dialogue. The last exchange with the Committee against Torture (CAT) took place in May 1999 when the first additional report was presented. At the time, the Committee confirmed Liechtenstein's very good implementation of the Convention. Since the legal foundations and practice have remained the same for a longer period of time, no additional reports have been submitted since. With the entry into force of the new Execution of Sentences Act and the partially revised Juvenile Court Act as well as the newly created provisions on the protection of witnesses in the Code of Criminal Procedure at the beginning of 2008, the situation has changed. The new and significantly improved framework allows the Government to hereby submit a further additional report.

4. In the reporting period, Liechtenstein was visited twice by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in 2002 and 2007. Since entry into force of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 1 January 1992, the CPT has been authorized to visit prisons and similar institutions in Liechtenstein. The last visit took place from 5 to 9 February 2007. The CPT report of 6 July 2007 and the statement by the Government of the Principality of Liechtenstein dated 18 December 2007 concerning that report and the CPT's recommendations have been published. Like all country reports and recommendations of international human rights bodies, these documents can be accessed on the website www.liechtenstein.li (State > Foreign policy > Human rights > Prohibition of torture).

5. Liechtenstein ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 2 November 1990, and the Convention entered into force for Liechtenstein on 2 December 1990. The initial report by Liechtenstein was reviewed by

the Committee in November 1994, and the first additional report in May 1999. The present second additional report covers the period from September 1998 to August 2008. Due to the long period of time, this report is drafted in the manner of an initial report; e.g., it contains no cross-references to earlier reports. The second additional report should simultaneously be considered the third, fourth, and fifth periodic report on the Convention. The first part contains general information on Liechtenstein and on the protection and promotion of human rights. The second part was prepared in accordance with the guidelines set out in document HRI/GEN/2/rev.5/Add.2 of 29 May 2008 and contains the legal, administrative, and other measures for implementation of the Convention carried out in the reporting period.

Government of the Principality of Liechtenstein

I. OVERVIEW OF LIECHTENSTEIN

A. Political and social structures

6. The territory of the Principality of Liechtenstein is located between Switzerland and Austria, covering an area of 160 km2. Liechtenstein consists of eleven rural municipalities, the two largest of which have populations of slightly more than 5,000. The Principality of Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. In the dualist system of State, the power of the State is vested in both the Reigning Prince and the people. The relatively strong position of the Reigning Prince is balanced by far-reaching direct-democratic rights of the people. 1,000 citizens or three municipalities can submit a legislative initiative. 1,500 signatures or resolutions by four municipalities are necessary to call an initiative on a constitutional amendment. The same minimum numbers apply to referenda against legislative or constitutional resolutions of the Liechtenstein Parliament. Referenda may be called within 30 days.

7. The Reigning Prince serves as Head of State and, without prejudice to the necessary participation of the responsible Government, represents the State in all its foreign relations. On the proposal of Parliament, the Reigning Prince appoints the members of the Government. He is also responsible for the appointment of judges, pursuant to their election by Parliament on the recommendation of a special selection body. When justified on substantial grounds, the Reigning Prince may dissolve Parliament and dismiss the Government. The Reigning Prince also may exercise emergency powers. Moreover, he has the right to pardon, mitigate, or commute criminal sentences. Every law requires the sanction of the Reigning Prince and countersignature by the Prime Minister to attain legal force. The Liechtenstein Parliament consists of 25 members, who are elected in general, direct, and secret elections every four years in accordance with the system of proportional representation. The most important responsibilities of Parliament are its participation in the legislative process, assent to international treaties, approval of financial resources of the State, election of judges on recommendation of the selection body, and supervision of the National Administration. Parliament elects the Government and proposes its members for appointment by the Reigning Prince. It may also initiate dismissal of the Government if the Government loses the confidence of Parliament. The Government consists of five members as the highest executive authority, supervising more than 40 administrative offices and numerous diplomatic representations abroad. About 50 commissions and advisory councils

support the work of the Administration. The Government has the power to issue ordinances and is therefore also a rule-making authority. Ordinances may only be enacted on the basis of laws and international treaties, however.

8. Municipal autonomy plays an important role in Liechtenstein. The eligible voters in each municipality elect a municipal council chaired by a mayor. The municipal authorities autonomously administer their business and manage the municipal resources. Citizens may call referenda against resolutions of the municipal council. According to article 4 of the Constitution, individual municipalities have the right to secede from the union pursuant to a popular vote and rules set out by law or treaty.

9. At the end of 2007, Liechtenstein had a resident population of 35,365 (31 December 2007) and is thus approximately the same size as a small city. Roughly 34% of the population are foreigners, of which 49% come from the countries of the European Economic Area (EEA)[1] (especially Austria and Germany) as well as Switzerland. About 21% of the foreign population is from other countries. In total, more than 90 nationalities are represented in Liechtenstein. At the end of 2006, 17% of the population were younger than 15 and 12% were older than 65. Life expectancy has risen steadily over the last 30 years. The average life expectancy in 2006 was nearly 80 for women and more than 70 for men. According to the latest census conducted in 2000, religious affiliation is as follows: 78.4% of the total population are Roman Catholic, 8.3% Protestant, and 4.8% Muslim. 4% of the population declared no religious affiliation. According to the Liechtenstein Constitution, German is the official language. As a rule, an Alemannic dialect of German is used as the colloquial language.

B. Legal and institutional framework

10. A wide range of fundamental rights is enshrined in the Constitution of the Principality of Liechtenstein. These include the right to life and the prohibition of the death penalty, respect for and protection of human dignity, prohibition of inhuman or degrading treatment or punishment, personal liberty, equality of women and men, immunity of the home, inviolability of letters and documents, right to education, right to proceedings before an ordinary judge, inviolability of private property, freedom of commerce and trade, freedom of religion and conscience, freedom of expression, freedom of the press, freedom of association and assembly, right to petition, and right of complaint. The Constitution also declares that all citizens are equal before the law, and that the rights of foreign citizens are governed by treaties or, in absence of such treaties, by the principle of reciprocity.

11. The Liechtenstein legal order contains no explicit provisions concerning the rank of international treaties within domestic law. International agreements may have the substantive rank of the Constitution, legislation, or ordinances. Since the constitutional revision of 2003, the Constitution provides for the review of the constitutionality of international treaties by the

[1] The European Economic Area (EEA) includes the 27 Member States of the European Union as well as the three EFTA States Iceland, Liechtenstein, and Norway.

Constitutional Court, so that treaties formally have a rank lower than the Constitution. At the same time, however, the Constitutional Court Act provides that numerous individual rights under international treaties can be asserted in the same way as constitutional rights by way of a constitutional complaint, so that they enjoy substantive constitutional rank. This is true explicitly of the European Convention on Human Rights, the ICCPR, the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and implicitly also of the EEA Fundamental Freedoms. Otherwise, the rank of an international legal norm is generally determined by the content of the rule in question. According to the jurisprudence of the Constitutional Court, international treaties ratified by Parliament enjoy at least the rank of legislation in domestic law. A ratified agreement becomes part of national law from the date of its entry into force. It is also self-executing where its provisions are sufficiently specific.

12. The administration of justice is divided into civil, criminal, administrative, and constitutional jurisdiction. Civil jurisdiction and part of criminal jurisdiction is exercised by individual judges of the Court of Justice in the first instance; in all other cases, jurisdiction is exercised by collegial courts. Before a lawsuit can be filed in contentious civil cases, a mediation procedure must be carried out in the place of residence of the respondent. Only if mediation fails can a lawsuit be initiated. The Court of Appeal is the court of second instance, the Supreme Court is the court of third instance. Administrative jurisdiction is exercised by the Administrative Court. Within the Administration, decisions are appealed to the Government or the Administrative Complaints Commission. Its decisions as well as the decisions of commissions acting on behalf of the Government may be appealed to the Administrative Court. The Constitutional Court reviews the constitutionality of laws and international treaties as well as the constitutionality and legality of Government ordinances. Unconstitutional laws and ordinances can be voided by the Constitutional Court; in the case of unconstitutional treaties, the Constitutional Court can order the non-application thereof within domestic law. However, the constitutionality of all international treaties is reviewed as part of the ratification procedure by the involved authorities. The responsibilities of the Constitutional Court also include the protection of constitutionally guaranteed individual rights and those guaranteed under the abovementioned international treaties, which may be asserted by means of a constitutional complaint against all final civil, criminal, and administrative decisions.[2] Once domestic remedies have been exhausted, decisions on violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ECHR), which entered into force for Liechtenstein on 8 September 1982, can be appealed to the European Court of Human Rights (ECtHR) in Strasbourg.

[2] These are the ECHR, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Racial Discrimination.

C. Overview of Liechtenstein's ratifications of international human rights treaties

13. As a member of the United Nations and the Council of Europe, Liechtenstein has ratified a number of European and international agreements for the protection of human rights. These are amongst others:

(a) Charter of the United Nations of 16 June 1945;

(b) Convention relating to the Status of Refugees of 28 July 1951, with Protocol of 31 January 1967;

(c) Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination;

(d) International Convention on Economic, Social and Cultural Rights of 16 December 1966;

(e) International Convention on Civil and Political Rights of 16 December 1966;

(f) Optional Protocol to the International Convention on Civil and Political Rights of 16 December 1966;

(g) Second Optional Protocol to the International Convention on Civil and Political Rights, aiming at the abolition of the death penalty, of 15 December 1989;

(h) Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women;

(i) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 6 October 1999;

(j) Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(k) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002;

(l) Convention on the Rights of the Child of 20 November 1989;

(m) Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(n) Statute of the Council of Europe of 5 May 1949;

(o) European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, including various protocols;

(p) European Convention of 26 November 1987 against Torture and Inhuman or Degrading Treatment or Punishment, including Protocols 1 and 2;

(q) European Framework Convention of 1 February 1995 for the Protection of National Minorities;

(r) European Charter for Regional or Minority Languages of 5 November 1995;

(s) European Agreement of 5 March 1996 relating to Persons participating in Proceedings of the European Court of Human Rights;

(t) Rome Statute of the International Criminal Court of 17 July 1998.

II. IMPLEMENTATION OF THE CONVENTION

Article 1

This article defines the term "torture" for purposes of the Convention.

14. Protection from torture and inhuman or degrading treatment is guaranteed by article 27 bis, paragraph 2 of the Liechtenstein Constitution (LV). The term "torture" is neither defined in the aforementioned provision of the Constitution nor in the subordinate legislation. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment also ratified by Liechtenstein likewise does not have an equivalent definition of torture. See, however, article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950, which entered into force for Liechtenstein on 8 September 1982. This provision prohibits torture and inhuman or degrading treatment or punishment. Various decisions of the European Court of Human Rights (ECtHR) in Strasbourg deal with the definition of torture and the definition of inhuman or degrading punishment or treatment. According to the ECtHR, the latter obtains only once the treatment complained of attains a "minimum level of severity", since sentencing and punishment are always degrading. The scope of the CAT likewise excludes pain and suffering in connection with lawful sanctions. The threshold of torture is only reached if the inhuman treatment is intentionally inflicted and causes very serious and inhuman pain or suffering. A "special stigma" attaches to such treatment. However, this is not a comprehensive definition as contained in article 1 of the CAT. Because the definition set out in the CAT is the only comprehensive definition, it has been considered authoritative for Liechtenstein since entry into force of the Convention for Liechtenstein.

Article 2

This article requires States Parties to take effective measures to prevent torture.

Paragraph 1

Legal foundations

15. As mentioned above, protection from torture and inhuman or degrading treatment is guaranteed by article 27 bis, paragraph 2 of the Liechtenstein Constitution (LV). This provision

was included in the Constitution in 2005. It reads as follows: “No one may be subjected to inhuman or degrading treatment or punishment.” This basic right can be asserted by every person. The prohibition is absolute and cannot be undermined by law or by the emergency decrees of the Reigning Prince (article 10, paragraph 2). Moreover, an absolute prohibition of torture applies in Liechtenstein pursuant to article 3 of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (ECHR), which entered into force for Liechtenstein on 8 September 1982. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which entered into force for Liechtenstein on 10 March 1999, is also relevant in this regard, which likewise prohibits torture and cruel, inhuman, or degrading treatment or punishment.

16. The remarks on article 4 discuss the provisions penalizing torture and inhuman or degrading treatment. Likewise of the utmost importance in the suppression of torture are the rights of detained persons immediately after arrest, such as the right to direct access to an attorney and, where applicable, consular protection.

Rights of detained persons

17. According to § 128a of the Code of Civil Procedure (StPO), a provision that entered into force on 1 January 2008, every arrested person must be informed upon arrest or immediately thereafter of the suspected offense and the reason for arrest, as well as of the person’s right to designate defense counsel and the right to remain silent. The person must be informed that any statement may be used in the person’s defense, but may also be used against the person. The detained accused may, pursuant to § 30 paragraph 3 StPO, consult with defense counsel without surveillance. Deviations are only permissible on an exceptional basis if the grounds for detention include the threat of suppression of evidence or the threat of commission of an offense and if serious reasons exist (interference with substantial evidence or endangerment of life and limb or other vital interests as a result of contact between the detained accused and defense counsel). The Code of Civil Procedure requires the appointment of defense counsel for the duration of the suspect’s pre-trial detention (§ 26 paragraph 3). If the accused does not choose defense counsel himself or herself, the court appoints defense counsel.

18. Pursuant to § 137 paragraph 2 StPO in connection with article 81 and article 87 of the Execution of Sentences Act, written and oral communication with the consular representation of the State of citizenship of the detainee or - if the detainee is stateless - of the State of habitual abode of the detainee. Such an obligation also arises for Liechtenstein under article 36(b) and (c) of the Vienna Convention on Consular Relations of 24 April 1963, which entered into force for Liechtenstein on 19 March 1967.

Procedure, especially judicial evaluation

19. Pursuant to § 128 paragraph 1 StPO, the investigating judge must order the arrest by issuing a decision, in which the preconditions for the arrest are to be listed on an individual basis. The executing authorities must provide the suspect (accused) with a copy of the arrest decision immediately upon arrest or within 24 hours. After the person has been arrested, the further procedure provides that, pursuant to § 128 paragraph 3 StPO, the Office of the Public Prosecutor must immediately or at the latest within 48 hours of the arrest submit an application to the court for pre-trial detention or for release. Subsequently, § 130 paragraph 1 StPO requires that the

arrested person must be questioned by the investigating judge immediately or at the latest within 48 hours of receiving the application for pre-trial detention. § 128 paragraph 3 StPO also provides that the investigating judge and the Office of the Prosecutor must be informed immediately of the arrest (by the law enforcement authorities). In turn, the Office of the Public Prosecutor is required by § 129 paragraph 2 StPO to immediately brief the court on the execution of the arrest.

20. Pre-trial detention may only be imposed on application of the Office of the Public Prosecutor and only for a specific duration determined by decision of the competent court. Conducting remand proceedings is mandatory, which the accused must attend, if he is not unable to do so due to illness. The accused must be represented by defense counsel (§ 132a StPO). The initial pre-trial detention period is 14 days; the first review of pre-trial detention may extend this period by one month; further review may extend it by two months (§ 132 StPO). Both the Public Prosecutor and the accused may appeal the decision of the custodial judge to the Court of Appeal within three days.

Police detention

21. It should also be noted that the National Police may detain a person for specific reasons on a temporary basis, for at most 24 hours (article 24h, paragraphs 1 and 5 of the National Police Act of 21 June 1989). The detained person must be informed of the reason for this measure. The person must also be given the opportunity to notify a confidant, unless this would endanger the purpose of the measure.

22. Based on § 129 StPO, the accused may, on an exceptional basis and only under strict conditions, be detained by law enforcement authorities without a written order for purposes of presentation to the investigating judge. Also in this event, the accused must be questioned immediately on the matter and the preconditions for arrest, and if it turns out that the reason for detention no longer obtains, the person must be released immediately. If release is ruled out, the Public Prosecutor must be informed immediately. If the Public Prosecutor declares that he will not submit an application for pre-trial detention, the arrested person must be released immediately.

Medical and pastoral care

23. Access to a physician is guaranteed. According to article 125, paragraph 5 of the Enforcement of Sentences Act, the prisoner undergoes a medical examination upon admission or shortly thereafter. In this connection, it should be noted that the Therapeutic Services Division of the Office of Social Affairs conducts consultations twice a month for inmates of the National Prison. Individual problems and conflicts are discussed and dealt with. According to the annual report of the Office of Social Services, an average of four inmates makes use of this service each consultation period. Additionally, inmates are entitled to pastoral care every second Thursday.

Inadmissibility of statements under torture

24. The Code of Civil Procedure (StPO) contains provisions on permissible methods of questioning. Pursuant to § 151 StPO, the questioning of accused persons may neither make use of promises or feints nor of threats or coercive measure to obtain confessions or other

information from the accused. Statements made in violation of these provisions are not admissible in court and may not be considered by the court when assessing the evidence. A violation of this prohibition may be asserted as a procedural ground of nullity in appeals proceedings (§ 220(6) and (7) StPO).

Juvenile justice

25. For the protection of young persons, § 18 of the Juvenile Court Act provides that, where possible, preliminary proceedings should be carried out in the absence of the police. Should the presence of the police be necessary, the juvenile should be escorted by a non-uniformed police office. The Juvenile Court Act also provides that the court may delegate specific or special investigations to the Office of Social Affairs (§ 21).

26. In connection with the arrest and questioning of young persons, the following special provision should be noted: Young persons up to the age of 18 may, pursuant to § 21a paragraph 1 of the Juvenile Court Act (JCA) demand that a confidant be present during their questioning on the matter or during formal interrogation by police organs or the court. In addition to legal representatives, such confidants may be legal guardians, relatives, teachers, educators, or representatives of the Office of Social Affairs or the Probation Service (§ 21a paragraph 2 JCA). Unless the juvenile is immediately released, the legal guardian must also be notified of the arrest without unnecessary delay. According to § 22 paragraph 1 JCA, the legal representative of an accused juvenile has the same rights of participation during investigations as the accused himself (such as right to inquiry, access to documents). The legal guardian may also appoint defense counsel for the accused, even against the will of the accused, and file legal remedies (§ 22 paragraph 3 JCA). Moreover, § 19 of the Juvenile Court Act restricts the possibility of imposing pre-trial detention for juveniles. Pre-trial detention is only permissible if no less strict means can be substituted, such as placement with the juvenile's own family or a trustworthy family or appropriate institution. Pre-trial detention is also only permissible if the disadvantages for personal development and advancement of the young person associated with pre-trial detention are not disproportionate to the significance of the offense. The Act also provides for limitation of the duration of pre-trial detention to 3 months, and to 6 months in the case of felonies. Only in the case of felonies punishable with more than five years imprisonment may the duration of pre-trial detention extend to one year. In such cases, the duration of pre-trial detention may only be longer than 6 months if this is unavoidable due to special difficulties or the extensive scope of the investigations in light of the gravity of the reason for detention. If no trial has been carried until by the aforementioned deadlines, the accused juvenile must be released immediately.

Paragraph 2

27. As a general matter, it should be noted that the Liechtenstein Constitution does not provide for martial law or similar instruments that might be used to entirely suspend the fundamental rights of citizens. While article 10, paragraph 1, sentence 2 LV provides that the Reigning Prince may, in urgent cases, take the necessary measures for the security and welfare of the State (emergency powers). These powers are limited in that neither the prohibition of torture and inhuman treatment or the principle of *nullum crimen sine lege* may be limited. Moreover, emergency decrees cease to apply six months at the latest after they have been issued (article 10, paragraph 2 LV).

Paragraph 3

28. A violation of the prohibition of torture is generally punishable under the penal provisions referred to in the comments on article 4, irrespective of whether the perpetrator has violated the prohibition on his own initiative or whether he has been instructed to do so by his superior. Under Liechtenstein law, all persons participating in a punishable act may be punished, i.e., both the perpetrator himself and any accomplices as well as instigators and accessories (§ 12 of the Criminal Code, StGB). The instruction of a superior to carry out an unlawful and punishable act is impermissible *a priori* as a justification. The principle of direct applicability applies *mutatis mutandis*.

Article 3

Article 3 prohibits the expulsion, return, or extradition of persons to a State where they might be tortured.

29. This article is generally also directly applicable, so that the required protection already arises directly from the Convention. However, this principle has been further specified in various laws.

Extradition

30. The conditions under which a person may be extradited from Liechtenstein to another State for purposes of prosecution are set out in the Law on International Legal Assistance in Criminal Matters of 15 September 2000 (Mutual Legal Assistance Act, MLAA). Article 19 MLAA prohibits extradition if it must be feared that:

(a) The criminal proceedings in the requesting State would not meet or have not met the principles set out in articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);

(b) The punishment or preventive measure imposed or expected in the requesting State would not be executed in a manner compatible with the requirements set out in articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ...

31. Article 3 of the ECHR referred to in the MLAA sets out a prohibition of torture and inhuman or degrading treatment or punishment, and article 6 of the ECHR guarantees a fair trial. Liechtenstein law thus goes beyond the minimum requirements set out in the CAT.

32. The Mutual Legal Assistance Act establishes a multi-stage procedure for the review of extradition requests. Review of the request and questioning of the person to be extradited falls within the scope of responsibility of the Court of Justice (court of the first instance), acting in the person of a single judge (article 26 MLAA). Upon conclusion of the requisite inquiries, the Court of Justice transmits the request, together with a reasoned application, to the Court of Appeal, which decides *en banc* on the permissibility of the extradition (article 33 MLAA); this decision does not determine yet whether the person is actually extradited, however. If the Court of Appeal declares the extradition impermissible, the Ministry of Justice is required to deny the request (article 34 MLAA). The decision of the Court of Appeal may be appealed to the Supreme Court (article 77, paragraph 2 MLAA in conjunction with § 240 paragraph 1(4) StPO). This appeal

does not have suspensive effect, though the president of the Supreme Court may, on application, grant such suspensive effect (§ 242 StPO). Whether a request for extradition is actually granted is ultimately decided by the Ministry of Justice in accordance with international agreements and the principles of intergovernmental relations. In this regard, it shall take account of the interests of Liechtenstein, obligations under international law, especially refugee law, and the protection of human dignity. No legal remedies are available against the order by the Ministry of Justice (article 77, paragraph 1 MLAA). The extradition (or surrender) of the person to be extradited is carried out by the National Police.

Deportation/expulsion

33. With respect to refugee law, article 3 of the Law on the Admission of Asylum-Seekers and Persons in Need of Protection (Refugee Act) stipulates the principle of non-refoulement: “No person may in any form be forced to leave for a country in which that person’s life, limb, or freedom is endangered for any reason set out in article 5 or in which the danger exists that the person may be forced to leave for such a country.” Article 5 of the Refugee Act defines what a “refugee” means. Refugees include persons who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, gender, or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country...” (article 5, paragraph 1(a)). Subparagraph 2 of the same paragraph further specifies that well-founded fear of being prosecuted obtains in particular where endangerment of life, limb, or freedom can be asserted or where measures are threatened that effect intolerable mental pressure. The same obligation arises for Liechtenstein also from article 33 of the Convention relating to the Status of Refugees of 28 July 1954 (Geneva Convention).

34. According to article 21 of the Refugee Act, the Government decides on whether asylum is granted or denied, on application of the competent administrative office. The Government’s decision may be appealed to the Administrative Court within 14 days (article 84, paragraph 2 of the Refugee Act).

35. Pursuant to a decision by the competent administrative office, an application for asylum is not considered if the asylum-seeker can leave for a country in which an asylum application is already pending or which is competent pursuant to an international agreement for execution of the asylum and expulsion procedure, and if that country does not force the asylum-seeker to leave for a country in which he or she would be persecuted or subject to inhuman treatment (article 25, paragraph 1(c) of the Refugee Act). Preventive expulsion is executable immediately (article 30, paragraph 3 of the Refugee Act), but the asylum-seeker may submit an application within 24 hours for restoration of the suspensive effect (article 90, paragraph 1 of the Refugee Act). The competent authority must decide on a request for restoration of the suspensive effect within 48 hours (article 90, paragraph 2 of the Refugee Act).

36. No cases arose during the reporting period in which extradition had to be denied or deportation was ruled out based on article 3 of the CAT or the corresponding national law, on the grounds that the person to be extradited or deported might be subject to torture or other cruel, inhuman, or degrading treatment or punishment in the destination country. The following Table 1 provides an overview of readmissions between 2003 and 2007.

Table 1

Readmissions for the period 2003-2007, by country

Returns to the following countries	2003	2004	2005	2006	2007
Austria	12	12	12	4	4
Switzerland	6	10	8	4	3
Germany	4	7	7	-	-
Belgium	-	-	-	-	3
France	1	-	1	-	-
Sweden	-	1	-	-	-
Total	23	30	28	8	10

Source: Immigration and Passport Office.

Article 4

Article 4 requires States Parties to make torture punishable in accordance with the definition set out in article 1 of the Convention.

Criminal Code

37. First, torture and inhuman or degrading treatment or punishment are expressly punishable under § 312 of the Liechtenstein Criminal Code (StGB) under the heading "Tormenting or neglecting a prisoner". Additionally, the offense of willful bodily injury set out in §§ 83 to 90 StGB may apply. Of particular interest in this connection is § 312 StGB, which reads:

(a) An official who inflicts physical or emotional suffering on a prisoner or other person detained on official order who is subject to his power or to whom he has official access shall be punished with imprisonment of up to two years;

(b) An official shall be subject to the same punishment who grossly disregards his obligation of care or custody toward such a person and in this way, even if only negligently, substantially injures the health or physical or mental development of that person;

(c) If the act results in serious bodily injury (§ 84 paragraph 1), then the perpetrator shall be punished with imprisonment of up to three years; if the bodily injury results in serious long-term damage (§ 85), with imprisonment of up to 5 years; and if the bodily injury results in the death of the injured person, with imprisonment of up to 10 years.

38. This provision only covers perpetrators who are officials committing torture, however; other persons committing torture are not covered by this provision. Unless the special provision in § 312 StGB applies, the cases falling within the scope of the Convention are covered by the provisions on the protection of bodily integrity.

39. Moreover, § 12 StGB makes participation in such offenses (incitement, accessory) punishable. The aforementioned punishable acts are subject to the regular statute of limitations, which is generally - depending on the gravity of the punishment - 1 to 10 years (§ 57 paragraph 2 StGB). In the case of § 312 StGB, the statute of limitations is 5 years.

Disciplinary law

40. Disciplinary measures used to be governed by the former Civil Servants Act and since 1 July 2008 have been governed by the new Law on the Employment of State Personnel (State Employees Act). Article 9d of the Civil Servants Act, which was in force until 30 June 2008, provided for initiation of disciplinary proceedings followed by the possibility of temporary suspension if the initiation of dismissal proceedings appeared justified or in the event of other accusations against civil servants and staff, or if continued employment would disrupt the proper functioning of an administrative office or would no longer be reasonable for the civil servant or staff member. The new State Employees Act, which entered into force on 1 July 2008, provides for the possibility of temporary suspension of an employee if there is sufficient evidence that a significant reason to dissolve the employment relationship obtains (subparagraph a), if criminal proceedings have been initiated on account of a felony or misdemeanor (subparagraph b), or if the public interest so requires (subparagraph c). As a further measure for securing the fulfillment of responsibilities, the new State Employees Act provides for the assignment of other work, reassignment, or reinstatement (article 49, paragraph 2(d) of the State Employees Act). As a less serious measure, the Act provides for reprimand, written censure, and reduction of pay by at most 30% for a period of at most 3 years. As a final measure, the employee relationship may be terminated.

Cases

41. No cases of torture or inhuman or degrading treatment were reported during the reporting period. However, the following cases leading to reports or complaints against law enforcement and security officers were reported:

(a) In 2001, disciplinary proceedings were initiated against a prison officer on the basis of inappropriate behavior (especially verbal pressure) toward an inmate. These proceedings not only led to immediate suspension of the officer, but also temporary reassignment to another public authority (for two years);

(b) In 2005, officers of the National Police were accused of bodily injury and deprivation of liberty. The citizen filing the complaint raised these accusations during questioning by the National Police. Even before the court began its preliminary assessment of the case, the proceedings were set aside by the Office of the Public Prosecutor, since the complainant later clarified that he had injured his thumb himself during the destruction of furniture, and the police officers had treated him properly otherwise as well;

(c) In 2006, two officers of the National Police were alleged to have committed “negligent violation of personal liberty”: the complainant had so heavily resisted the order to trim his hedge that the officers brought him to the police station, where he was immediately released after questioning. The criminal complaint was set aside by the Office of the Public

Prosecutor, but when the complainant filed an application to continue the complaint, the competent investigating judge conducted investigative proceedings, which did not result in criminal charges against the officers, however. The charges have meanwhile been thrown out;

(d) Other charges of deprivation of liberty were filed in 2007. The complainant accused officers of excessively prolonging his questioning after a traffic accident, in light of the injury in question. After an investigation, the proceedings were suspended;

(e) Finally, a decision by the European Court of Human Rights on 27 June 2006 in the case Eugen von Hoffen v. Liechtenstein should be noted. The complainant in particular accused Liechtenstein of violating article 6, paragraph 1 ECHR for excessive duration of trial and of violating article 3 (prohibition of torture) ECHR. In this connection, he complained that he had not been able to open the window in his prison cell for the first one and a half months of his pre-trial detention from mid-May to the end of June. While the Court found a violation of article 6, paragraph 1 ECHR, the complaint relating to article 3 and article 5, paragraph 1 ECHR were thrown out as obviously unjustified. In this connection, the Court stated that the investigating judge had, on application by the complainant, instructed the prison staff to ensure sufficient ventilation of the cell. The Court also recognized that sufficient grounds for detention obtained. Moreover, the Court found that the cell had a ventilation system and that the complainant had been given access to fresh air during this daily walk in the prison yard, which the complainant did not dispute.

Article 5

This article requires States Parties to establish the jurisdiction of its courts over the offenses referred to in article 4.

42. According to § 64 paragraph 1 (6) StGB, Liechtenstein criminal provisions apply irrespective of the criminal provisions of the State where the offense was committed if Liechtenstein is required to prosecute the offense. Since the direct applicability of article 5 of the Convention entails an obligation of this sort for Liechtenstein, jurisdiction of Liechtenstein courts for prosecution of the cases referred to in article 5 is given pursuant to § 64 paragraph 1(6) StGB. Moreover, the law expressly provides for its own application in the following cases:

(a) According to § 63 StGB, the Liechtenstein Criminal Code also applies to offenses committed on Liechtenstein ships and aircraft, regardless of where they are located;

(b) § 64 paragraph 1(2) StGB provides for the application of the law to Liechtenstein officials who have committed these offenses abroad, irrespective of the criminal laws of the country where the offense was committed;

(c) § 65 StGB provides for the application of the StGB to offenses committed abroad by Liechtenstein citizens and persons who cannot be extradited for reasons other than the offense committed, if the offense committed is also punishable under Liechtenstein law (§ 65 paragraph 1 (1) and (2) StGB).

Article 6

Article 6 is concerned with the exercise of jurisdiction, especially in connection with persons alleged to have committed offenses referred to in article 4 of the Convention and where the person is present in territory of a State Party.

Paragraphs 1 and 2

43. Due to their direct applicability, paragraphs 1 and 2 do not require special implementation. The competent Liechtenstein prosecution authorities prosecute violations of the prohibition of torture in conformity with the provisions of the Code of Criminal Procedure, the Convention, and other international agreements in force for Liechtenstein.

44. If a person abroad is suspected of an act subject to criminalization under the Convention, the person is arrested in Liechtenstein - provided that an extradition request or arrest warrant has been issued - and placed in (provisional) detention pending extradition. The permissibility of detention pending extradition is governed by article 29 MLAA. According to paragraph 1 of that article, detention pending extradition may only be ordered if there are sufficient grounds to assume that a person arrested in Liechtenstein has committed an offense subject to extradition. According to paragraph 2, extradition is only permissible if the purpose of detention cannot be achieved by ordering judicial investigation or criminal detention. The person to be extradited must be notified prior to the decision on imposition of detention pending extradition of the accusations made against that person and that the person is at liberty to make a statement or to remain silent and to consult with defense counsel. The person shall also be informed of his or her right to apply for public proceedings before the Court of Appeal. The duration of detention pending extradition may not exceed 6 months (paragraph 4). The Court of Justice may, however, upon application by the Office of the Public Prosecutor, extend the duration of detention pending extradition to a maximum of one year. The precondition is that the proceedings pose special difficulties or are especially broad in scope. Moreover, extension is possible if a felony (i.e., a willful criminal offense punishable with life in prison or more than three years imprisonment; § 17 paragraph 1 StGB) has been committed (paragraph 4). § 312 StGB as a basic offense is not covered by this provision, but it may be in its qualified form (bodily injury resulting in permanent damage or death of the victim).

45. With respect to the duration of detention of a person accused of an offense under article 4 of this Convention, the European Convention on Extradition of 13 December 1957 should be noted, which entered into force for Liechtenstein on 26 January 1970. Article 16, paragraph 4 of that convention limits provisional detention pending extradition (i.e., until receipt of a formal request for extradition) to 40 days. A person detained in accordance with the provisions of that convention is granted the same rights as other persons in pre-trial detention.

Paragraph 3

46. As already stated under article 2, § 137 paragraph 2 StPO in conjunction with articles 81 and 87 of the Criminal Code guarantee written and oral communications with the consular representation of the State of citizenship of the arrested person or - if the person is stateless - the

State of his habitual abode. Such an obligation also arises for Liechtenstein under article 36(b) and (c) of the Vienna Convention on Consular Relations of 24 April 1963, which entered into force for Liechtenstein on 19 March 1967.

Paragraph 4

47. In this connection, article 28 MLAA provides for the possibility of offering extradition of the suspect arrested in Liechtenstein to the State in which an offense has been committed. Until the decision on whether extradition is to be requested, the person to be extradited may be kept in provisional detention pending extradition. The requesting State must be given a reasonable deadline for submission of the extradition request. After the deadline has expired or the State has declined the offer to request extradition, the person in detention pending extradition shall be released immediately.

48. No cases have been recorded in which these provisions have been applied.

Article 7

This article requires States Parties to always initiate criminal proceedings if they have jurisdiction, unless they extradite the person.

Paragraph 1

49. As already mentioned under article 5 of the Convention, Liechtenstein courts have jurisdiction in cases referred to in articles 5 and 7. Article 60 MLAA also provides for the possibility of taking over foreign criminal proceedings in the event that a person is not extradited.

Paragraph 2

50. As explained under article 4 of the Convention, violations against the prohibition of torture under Liechtenstein law are criminal offenses that must be prosecuted *ex officio* by the prosecution authorities. This is entailed by the principle of mandatory prosecution of offenses set out in § 21 paragraph 1 StPO, according to which the Office of the Public Prosecutor as the competent prosecution authority is required to prosecute *ex officio* all offenses that come to its attention.

51. The requirements for demonstrating an offense are in principle independent of the grounds giving rise to criminal prosecution; i.e., for criminal prosecution under both articles 4 and 7, the same evidentiary requirements apply.

Paragraph 3

52. Every accused person is entitled to a fair trial, irrespective of the criminal offenses of which the person is accused. Applicable in this connection is the European Convention on Human Rights ratified by Liechtenstein, article 6 of which stipulates the right to a fair trail and which is directly applicable in Liechtenstein. In particular, this provision guarantees the right of the accused to participate in person in the proceedings, which in turn entails the right to defend oneself and to confront incriminating witnesses. § 195 StPO provides that witnesses and experts

must be heard in the presence of the accused, for instance. Moreover, the accused may respond to statements made by every witness or accused (§ 196 paragraph 4 StPO). Article 6 ECHR guarantees the principle of equality of arms, first and foremost for the trial and for the appellate proceedings. But the accused must also be able to defend himself in the investigative proceedings. The aforementioned provisions moreover guarantee the right to by heard by the court. Finally, article 6, paragraph 2 ECHR presumes the innocence of the person accused of a punishable act until guilt has been proven.

53. The right to defense is guaranteed by article 33, paragraph 3 of the Liechtenstein Constitution and by § 24 paragraph 1 of the Code of Criminal Procedure. § 26 paragraph 2 StPO guarantees the right to defense counsel free of charge if the accused is unable to bear the costs of defense himself without encroaching upon the expenditures necessary for a simple lifestyle. According to the recently added § 128a StPO, every arrested person must, upon his arrest or immediately thereafter, be informed of the suspicion against him and the reason for the arrest as well as of his right to consult defense council and the right to remain silent (§ 23 paragraph 4 StPO).

Article 8

In article 8, States Parties undertake to recognize torture and related offenses as extraditable offenses.

54. All provisions of this article are directly applicable. All paragraphs may be used as a legal basis for extraditing persons suspected or accused of committing an offense under article 4 of the Convention, irrespective of provisions contained in international treaties or laws.

55. Notwithstanding, the extradition of a person accused of torture or a violation of the relevant criminal provisions is possible independently of the treaty rules. The already mentioned Mutual Legal Assistance Act (MLAA) of 15 September 2000 governs the preconditions under which an accused person may be extradited to another State, even if no treaty arrangement exists with the State in question (articles 10 et seqq. MLAA). The offenses referred to in the comments on article 4 are extraditable under the MLAA. Article 11 MLAA defines without a doubt which offenses are subject to extradition.

56. Also noteworthy is the Law on Cooperation with the International Criminal Court and Other International Tribunals of 20 October 2004, article 7 of which provides the possibility of surrendering Liechtenstein citizens, which would not be possible without their explicit consent under article 12 MLAA.

57. As noted in the comments on article 6 of the Convention, Liechtenstein has ratified the European Convention on Extradition of 13 December 1957, which entered into force for Liechtenstein on 26 January 1970. Bilateral treaty arrangements have been concluded with Austria, the Netherlands, and the United Kingdom to facilitate application of the European Convention on Extradition and to expand its scope of application to dependent territories of the Netherlands and the United Kingdom. Extradition treaties have also been concluded with Belgium and the United States dating back to 1936.

58. No requests for extradition were made under this article in the reporting period.

Article 9

Article 9 requires States Parties to grant each other mutual legal assistance with respect to torture and related offenses.

59. As mentioned above, the Mutual Legal Assistance Act of 15 September 2000 governs the preconditions, irrespective of the existence of a treaty basis, under which mutual legal assistance is granted with respect to criminal offenses referred to in article 4 of the Convention. On a supplemental basis, it should be noted that Liechtenstein is a State Party of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which entered into force for Liechtenstein on 26 January 1970. Also of note is the Agreement on Mutual Legal Assistance in Criminal Matters between the Principality of Liechtenstein and the United States, concluded on 8 July 2002.

Article 10

Article 10 requires States Parties to train medical personnel, persons involved in enforcement of sentences, members of the administration of justice, and other persons.

60. Liechtenstein security officers are trained for 3 months in how to treat and take care of prisoners and other persons in their custody. This training includes study of the various legal foundations important in this regard. In addition to the anti-torture conventions, these include the criminal law, the law of criminal procedure, and the Enforcement of Sentences Act. Naturally, these legal foundations are also a subject of training for law enforcement officers, judges, and lawyers. To date, no special training program has existed for medical professions. It should also be noted that internal service instructions of the National Police determines the procedure for arrest and detention. These instructions refer especially to the rights of detainees (right to lawyer and consular protection, etc.).

Article 11

This article requires States Parties to keep under systematic review their interrogation rules and practices for the execution of sentences, with a view to preventing torture and other cruel or inhuman treatment or punishment.

Principles of custody

61. A few comments should be made in this connection concerning the special geographic and spatial features characterizing custody in Liechtenstein, given the small size of the country.

62. Vaduz Prison is the only facility in Liechtenstein in which pre-trial detainees, convicts, and foreign citizens imprisoned pursuant to immigration law provisions can be kept in custody. The official capacity is 20 persons. Occupation rates fluctuate heavily. The maximum capacity has never been reached in recent years. There are 16 individual cells and 2 double cells. In the police wing, there is also an admission cell and an observation cell (with video surveillance), which is however only used for short-term custody, such as of heavily inebriated persons. The average size of the cells is approximately 9 to 10.5 square meters.

63. The following Table 2 provides an overview of the persons imprisoned in Vaduz Prison between 2003 and 2007.

Table 2

Inmates and duration of detention (in days)

	2003	2004	2005	2006	2007
Inmates	186	160	130	98	80
Women	7	10	5	18	4
Men	179	150	125	80	76
Duration of detention	4 723	2 649	2 713	3 193	2 696
Women	284	146	10	122	154
Men	4 439	2 503	2 703	3 071	2 542

Source: Annual Prison Reports 2003-2007.

64. As a rule, only terms of imprisonment up to two years are executed in Vaduz Prison. Persons sentenced to more than two years imprisonment serve their term in a facility in Austria, pursuant to a treaty between Liechtenstein and Austria on the placement of prisoners concluded 4 July 1982.

65. As a rule, inmates in Vaduz have access to two community rooms (a library, also with foreign-language books, and a game/sports room) seven to eight hours per day. Two computers as well as fitness equipment are available. Restrictions may apply under special circumstances. The women's wing is separated from the men's wing. Male inmates have additional movement options outside in the courtyard. The courtyard is set up for various games. So far, this option is available for female inmates only on the roof terrace of the prison. The measure was introduced to protect the female inmates from (verbal) harassment by the male inmates (some of the cells have windows facing the courtyard).

66. With respect to the detention conditions of minors, it should be noted that Liechtenstein has no special detention facilities for juveniles. However, it should also be noted that juveniles are only seldom imprisoned in Liechtenstein. In the reporting period, no juveniles were imprisoned. Where needed, the option exists of transferring juveniles to a special facility pursuant to the abovementioned treaty with Austria on the placement of prisoners.

67. The principles on the treatment of prisoners are governed by the revised Execution of Sentences Act of 20 September 2007, in force since 1 January 2008. The Act stipulates first of all that prisoners must be treated with calmness, seriousness, and firmness, in a fair manner and with respect for their honor and human dignity (article 21, paragraph 1). The Act also governs the preconditions under which individual prisoners may be granted special amenities (article 22), the possession of objects and the acquisition of commodities (articles 30 and 31), as well as principles of nutrition (article 35). The Act also contains provisions on the type of accommodation (article 37), hygiene (article 39), movement in the fresh air (article 40), and work requirements (articles 41 et seqq.). Provisions are also included on education

(articles 52 et seqq.), medical care (articles 62 et seqq.), social care (article 74), and pastoral care (article 75) of prisoners. Furthermore, the Act contains provisions on communications with the outside world (articles 76 et seqq., written correspondence, telephone, visitors). Some of the provisions on communication with the outside world will be discussed here in more depth, since the possibility of communicating with the outside world is of central importance in the fight against torture and cruel, inhuman, or degrading treatment.

68. Article 81, paragraph 1 of the Execution of Sentences Act (StVG) guarantees the right of prisoners in principle to send letters in a sealed envelope to public authorities, defense counsel, and care providers. Prisoners are notified of this right in a fact sheet they receive together with other documentation upon entering the corrections facility. Since 2007, these documents have been available in German, English, French, Italian, Albanian, Polish, Serbian, Turkish, and Russian. In addition to national authorities, public authorities include, in particular, the European Court of Human Rights, the European Committee for the Prevention of Torture (CPT), other international tribunals (such as the ICC), and the consular representation of the home country of a foreign prisoner. Letters to public authorities may only be opened in the event of a justified and not otherwise verifiable suspicion of impermissible mailing of money or objects and only in the presence of the prisoner (article 81, paragraph 2 StVG). Letters to defense counsel or care providers or letters from such persons or from public authorities may only be opened in the cases referred to in article 81, paragraph 2 StVG and then only in the presence of the prisoner. In the event of justified suspicion that the letter indicates a false sender (article 81, paragraph 3(b)(1) StVG), the letter constitutes a threat to the security of the facility (point (2)), or the content of the letter realizes a criminal offense (point (3)), then the letter may be opened in the presence of the prisoner. The letter may only be read under the last two conditions, namely points (2) and (3). If the suspicion is confirmed, the letter shall be retained. The entity referred to in article 81, paragraph 1 StVG to which the letter was addressed shall be informed that the letter was retained, in addition to the prisoner himself pursuant to article 80, paragraph 2 StVG. This notification may be omitted if it would interfere with the purpose of retaining the letter.

69. In this connection, it should be noted that the Therapeutic Services Division of the Office of Social Affairs conducts consultations twice a month for inmates of the National Prison. The legal basis for this activity is article 62 et seqq. StVG. Individual problems and conflicts are discussed and dealt with. According to the annual report of the Office of Social Services, an average of four inmates make use of this offering each consultation period. Additionally, inmates are entitled to pastoral care every second Thursday (see article 75 StVG). The Prohibition Service also carries out social work services for inmates, pursuant to a service agreement between the Prohibition Service and the Office of Social Affairs. The social work activities are governed by article 74 StVG and include networking of inmate care, taking account of client-related and organizational aspects of finances and insurances as well as care upon release.

National preventive mechanism

70. At the level of prevention, it should again be mentioned that Liechtenstein has ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002 (OP-CAT). OP-CAT entered into force for Liechtenstein on 3 December 2006.

71. On the occasion of the total revision of the Enforcement of Sentences Act and for purposes of implementing the Optional Protocol, article 17 of the Enforcement of Sentences Act establishes a Corrections Commission to monitor the enforcement of sentences. The responsibility of the Commission is to "satisfy itself that provisions governing the execution of sentences are precisely observed, especially with respect to the treatment of prisoners." The Commission is composed of 5 members and is appointed by the Government for a term of 4 years. From among its membership, the Commission elects a chairman and a deputy chairman (paragraph 2). At least two members of the Commission shall not be in the service of the National Public Administration, and at least two members must be women. All members are expected to have an understanding of the execution of prison sentences (paragraph 3). The Commission has an interdisciplinary membership (lawyers, physicians, social workers, and criminal law and enforcement specialists). It is independent in the exercise of its responsibilities and is not bound by any instructions. Each quarter, the Commission must visit the National Prison once without notice. After each visit, the Commission shall notify the Government in writing within 14 days. It may demand information on prisoners and access to corrections records. It is entitled to speak with persons detained in the National Prison in private (paragraph 5). The activities of the Corrections Commission are not limited to convicted prisoners, but also extend to remand prisoners (§ 133 paragraph 4 StPO declares the Execution of Sentences Act applicable in this regard) and other persons detained in the National Prison. The Corrections Commission also serves as a national preventive mechanism for purposes of Part IV of the Optional Protocol and fulfills the requirements set out in articles 18 to 23 of OP-CAT.

Article 12

Article 12 requires States Parties to ensure that their competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that the prohibition of torture or the prohibition of cruel and inhuman treatment or punishment has been violated.

72. According to § 21 StPO, the Office of the Public Prosecutor as the competent prosecution authority is required to initiate a prosecution *ex officio* if there is sufficient evidence to indicate suspicion of the commission of an offense punishable under this Convention. Moreover, the Office of the Public Prosecutor is required to prosecute *ex officio* all criminal complaints brought to its attention (§ 56 StPO). Charges or complaints relating to torture - offenses that are subject to mandatory prosecution *ex officio* - are treated as formal criminal proceedings by the competent authorities (Office of the Public Prosecutor and investigating judge). Please refer to the comments on articles 4 and 13.

Article 13

Under this article, States Parties must guarantee the right of every person to file charges concerning torture or cruel or inhuman treatment or punishment. States Parties must also guarantee an impartial investigation and the protection of the victims and of witnesses.

73. According to § 55 paragraph 1 StPO, every person gaining knowledge of an offense subject to *ex officio* prosecution has the right to report that offense. In accordance with sentence 2 of that provision, not only the Office of the Public Prosecutor but also the

investigating judge and the law enforcement authorities are required to accept such reports. Under § 56 StPO, the Public Prosecutor is required to review all reports it receives concerning offenses subject to *ex officio* prosecution and to pursue any leads concerning such offenses that it learns of. All criminal offenses, including torture and inhuman or degrading treatment, are covered by the abovementioned provision set out in § 55 StPO.

74. If the Office of the Public Prosecutor decides to suspend the proceedings or to set aside the complaint, the victim - who under Liechtenstein criminal procedure enjoys the legal status of a private participant (§ 32 StPO) - has the right to continue the prosecution as a subsidiary accuser in lieu of the Public Prosecutor by submitting an application for initiation or continuation of the investigation or the indictment to the Court of Justice within 14 days of being notified (§ 173 StPO). The Court of Appeal decides on the admissibility of the application, without the possibility of further appeal.

75. The right to complaint is guaranteed by article 43 of the Liechtenstein Constitution, according to which every citizen is “entitled to lodge a complaint regarding any action or procedure on the part of a public authority which is contrary to the Constitution, the law or the official regulations and detrimental to his rights or interests. Such complaint shall be addressed to that authority which is immediately superior to the authority concerned and may, if necessary, be pursued to the highest authority, except when the right of recourse may be barred by a legal restriction.” The right to complaint demanded by the Convention is thus already guaranteed at the level of the Constitution. In accordance with article 6, paragraph 1 and article 13 of the European Convention on Human Rights, this right is not only accorded to Liechtenstein citizens, but also to all other persons subject to Liechtenstein law. This right is further specified in abovementioned article 114 StVG, which governs the right to complaint of prisoners with respect to decisions or orders affecting their rights as well as all conduct of corrections staff affecting their rights. Moreover, appeals during the investigative proceedings may be lodged with the Court of Appeal in accordance with § 239 paragraph 2 StPO if the prisoner is, for instance, improperly treated during arrest, which of course also includes the more serious accusation of torture.

76. There are no extra procedural protection programs for witnesses. In the course of a partial revision of the Code of Criminal Procedure in 2004 (Liechtenstein Law Gazette LGBl. 2004 No. 236, in force since 1 January 2005), however, the legal status and protection of witnesses during trial were improved. For instance, a procedural right to respectful treatment and the greatest possible sensitivity is provided. The revision primarily addressed the interests of young victims and victims of sexual offenses. However, it may in principle also be applied to victims of torture. The most important achievement of the legislative revision is the possibility of sensitive questioning (§ 115a paragraphs 1 and 2 StPO). Witnesses in need of protection can be questioned by the perpetrator in separate rooms. This spares victims and witnesses direct confrontation with the perpetrator. At the same time, the rights of the perpetrator to defend himself are maintained. Additionally, the right to refuse testimony has been expanded. This ensures, for instance, that victims in special need of protection must, as a rule, only appear in court once, and are therefore given the highest possible protection. § 119a StPO also allows witnesses to refuse to answer questions concerning their name and other personal information as well as questions whose responses were allow such inferences to be drawn, if specific facts

indicate that the life, health, physical integrity, or freedom of the witness or a third party might be seriously endangered if the question is answered. Finally, § 197 StPO provides that the president may, on an exceptional basis, order the accused to leave the courtroom during the questioning of a witness. Subsequently, the accused must be informed of what happened during his absence, especially concerning the content of the questioning of the witness.

77. According to article 93(c) LV, the Government is responsible for supervision of the prisons and of the treatment of persons detained in custody and of convicts. The Corrections Commission referred to in article 17 StVG was established in part so that the Government can obtain independent information on occurrences in the National Prison.

Article 14

Article 14 guarantees victims of torture the right to obtain adequate compensation and rehabilitation.

78. Article 32, paragraph 3 of the Liechtenstein Constitution stipulates that persons arrested unlawfully or when demonstrably innocent and those proved innocent after conviction shall be entitled to full compensation from the State as determined by the courts.

79. The right to compensation for torture suffered is further specified and also guaranteed by the Official Liability Act. Article 3, paragraph 1 of the Act stipulates liability of public entities for damage unlawfully caused to third parties by persons acting as its organs in the exercise of official activities. The Official Liability Act expressly also applies with respect to the killing and injury of demonstrably innocent persons as well as with respect to persons arrested unlawfully or when demonstrably innocent and those proved innocent after conviction (article 14).

80. Pursuant to article 11, paragraph 2 of the Official Liability Act, compensation claims must be filed with the entity against which the claim is directed. If that entity does not recognize the claim within 3 months of its submission, a civil complaint against the entity may be filed with the Court of Appeal in the first instance (article 11, paragraph 2 in conjunction with article 10, paragraph 1 of the Official Liability Act). Civil law (article 3, paragraph 4 of the Official Liability Act) and the Code of Civil Procedure (article 11, paragraph 1 of the Official Liability Act) apply, unless the Official Liability Act contains provisions to the contrary.

81. Since there were no cases of torture in the reporting period or in the preceding periods, no special rehabilitation program exists. However, see the Law on Assistance to Victims of Criminal Offenses of 22 June 2007 (Victims Assistance Act). This Act grants victims of criminal offenses the right to appropriate medical, psychological, social, legal and material assistance by State victims assistance offices.

Article 15

Article 15 requires States Parties to ensure that statements made under torture may not be used in any proceedings, except against person accused of torture.

82. Pursuant to § 151 StPO, the questioning of accused persons may neither make use of promises or feints nor of threats or coercive measure to obtain confessions or other information

from the accused. This entails that statements of an accused made under torture may not be used in any judicial proceedings. Inadmissibility of such statements also derives from the directly applicable provision of the Convention. A violation of this prohibition may be asserted as a procedural ground of nullity in appeals proceedings (§ 220(6) and (7) StPO).

83. The question of the admissibility of derivative evidence, i.e., the question whether evidence only discovered on the basis of inadmissible evidence, and thus evidence subject to the prohibition of admissibility (the question of remote effect of prohibitions against the admissibility of evidence), is subject to international controversy and has apparently not been decided by the highest courts in Liechtenstein.

Article 16

This provision requires States Parties to prohibit cruel, inhuman, or degrading treatment or punishment.

84. As already explained in the comments on article 4, the definitions under national law are not limited to the definition of torture set out in article 1 of the Convention, but rather their wording is broader, also including the acts referred to in article 16 which constitute cruel, inhuman, or degrading treatment or punishment. Please refer to the comments on the relevant articles, especially article 11 of the Convention concerning the conditions of custody.
