

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

**from 5 to 9 February 2007**

The Government of the Principality of Liechtenstein has requested the publication of this response. The report of the CPT on its 2007 visit to Liechtenstein is set out in document CPT/Inf (2008) 20.

Strasbourg, 3 July 2008

*The Appendices (only available in German) mentioned in this document  
may be obtained from the Committee's Secretariat.*

**Response of the Government of the Principality of Liechtenstein to  
the report 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 5 to 9 February 2007**

Vaduz, 18 December 2007

**Preface:**

The promotion and protection of human rights and the rule of law are priorities of Liechtenstein domestic and foreign policy. Good cooperation with international monitoring and prevention mechanisms is of crucial importance in this connection.

Since the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force for the Principality of Liechtenstein on 2 December 1990, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has visited Liechtenstein three times (1993, 1999, and 2007). The reports on the first two visits were published together with the responses of the Government in 1995 and 2002.<sup>1</sup>

The most recent visit of the CPT to Liechtenstein took place from 5 to 9 February 2007. The CPT adopted its report at its 63rd meeting, held from 2 to 6 July 2007, and transmitted the report with the accompanying letter dated 12 July 2007 to the Liechtenstein authorities. Furthermore, the Liechtenstein authorities were requested by the CPT to provide within six months a response giving a full account of implementation measures, including responses to the recommendations and requests for information contained in the report.

The present response follows the structure of the report of the Committee. The recommendations, comments, and requests for information of the CPT are cited in ***bold cursive*** font.

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<sup>1</sup> <http://www.cpt.coe.int/en/states/lie.htm>

Recommendations, comments and requests for information:

## I. INTRODUCTION

### *Paragraph 9:*

***The CPT comments that the Liechtenstein authorities are requested to review the question of access to medical files for CPT visiting delegations, in the light of the remarks made in paragraphs 7 to 9.***

First, the Government would like to reiterate that it is of great concern to Liechtenstein to comply with the Convention and to provide all available information to the CPT that is needed by the CPT in the fulfillment of its responsibilities.

The Liechtenstein authorities certainly understand, for instance, that the CPT would like to access the medical files of detained or formerly detained persons in order to ascertain whether, for instance, there are indications of ill-treatment in the National Prison. In this regard, the Liechtenstein authorities also support every measure aimed at combating torture and inhuman or degrading treatment or punishment.

According to Liechtenstein law, however, pursuant to article 18<sup>2</sup> of the Law of 22 October 2003 on Physicians (Physicians Act)<sup>3</sup>, Liechtenstein Law Gazette LGBI. 2003 No. 239, and article 15<sup>4</sup> of the Law of 18 December 1985 on Public Health (Public Health Act)<sup>5</sup>, LGBI. 1986 No. 12, there is an obligation to keep medical data confidential, so that this secret is strictly protected and may only be disclosed when fulfilling an explicit legal obligation or pursuant to authorization by the person concerned. For instance, legal duties of disclosure contained in the applicable laws are deemed such a legal obligation. The provision contained in article 8 para. 2 (d) of the Convention, however, is not considered an explicit legal obligation, so that medical data may only be disclosed with the explicit consent of the person concerned, or, in this case, the detained patient. It is worth noting that the EU Data Protection Directive 95/46/EC<sup>6</sup>, which has been implemented by the Liechtenstein Data Protection Act<sup>7</sup>, provides in article 8 para. 2 (a) that medical data may be processed if, *inter alia*, the data subject has given his explicit consent to the processing of the data.

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<sup>2</sup> Article 18 Confidentiality; professional secrecy: Physicians and their staff shall be required to maintain secrecy concerning facts that have been entrusted to them or become known to them in the exercise of their profession. They shall only be entitled or required to disclose such secrets when meeting an explicit legal obligation or pursuant to authorization by the person affected by the secret.

<sup>3</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=2003239.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=2003239.pdf).

<sup>4</sup> Article 15 a) Confidentiality: The professionals referred to in this Act shall be required to maintain secrets that have been entrusted to them or become known to them in the exercise of their profession. They shall only be empowered to disclose such secrets when meeting an explicit legal obligation or pursuant to authorization by the person entitled to so authorize.

<sup>5</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=1986012.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1986012.pdf).

<sup>6</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (EEA Compendium of Laws: Annex XI - 5e.01).

<sup>7</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=2002055.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=2002055.pdf).

From Liechtenstein's perspective, it is also understandable if, given the naturally low number of Liechtenstein prisoners, the CPT would additionally like to access medical files of persons already released, in order to obtain a better and broader overview of the situation. But also in this respect, the Liechtenstein authorities follow the applicable law, according to which this secret must be maintained and may not be disclosed without authorization by the person concerned. In view of the fact that many formerly detained persons no longer reside in Liechtenstein after their release, however, they are only able to give authorization after the fact in very rare cases.

Accordingly, the Liechtenstein authorities have deliberated on how, under the circumstances, to reconcile the legal provisions with the certainly understandable desire of the CPT, and have found a solution that they hope is workable and satisfactory to all parties involved:

Starting 1 January 2008, all persons to be released from the National Prison in Vaduz will, at the time of their release, be given a form (see Enclosure 8), in which the concerned person specifies in writing whether he or she is willing, upon a visit by the inspection commission, a CPT delegation, the Commissioner for Human Rights, or other comparable institution, to grant access to the relevant medical files in the National Prison, or whether he or she refuses to do so (note: by checking a box). The name of the person to be released, his or her date of birth, and the date of release shall be entered on the form; the person must also sign the form. A refusal to sign shall be considered a refusal to grant access. Additionally, the text of the form specifies that the released person may at any time – i.e. after release – revoke consent in writing or subsequently grant consent (note: a free form, signed letter to the National Police shall suffice); this possibility of revoking consent is intended to ensure that the person to be released is not subject to any pressure by the Liechtenstein authorities.

The Liechtenstein authorities hope that this form contributes to respect for patient secrecy on the one hand (also in regard to formerly detained persons), but also allows the CPT and other comparable institutions to access medical files as appropriate for the purpose of preventing ill-treatment.

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

### A. Police custody

#### 1. Preliminary remarks

##### *Paragraph 11:*

*The CPT requests to be informed about progress made regarding the legislative reforms underway at the time of the visit concerning pre-trial detention.*

In its decision of 24 April 2007, the Government adopted its Report and Application to the Parliament of the Principality of Liechtenstein concerning Amendment of the Code of Criminal Procedure, the Juvenile Court Act, and the Mutual Legal Assistance Act (Reform of Pre-Trial Detention)<sup>8</sup>, No. 49/2007. This document already discussed the visit of the CPT delegation in February 2007. This draft law proposed by the Government was considered by the Parliament of the Principality of Liechtenstein in a first reading on 24 May 2007<sup>9</sup>.

On 21 August 2007, the Response of the Government to the Questions Raised by the Parliament of the Principality of Liechtenstein in its First Reading concerning Amendment of the Code of Criminal Procedure, the Juvenile Court Act, and the Mutual Legal Assistance Act (Reform of Pre-Trial Detention)<sup>10</sup>, No. 92/2007, was adopted by the Government, in which the Government also very specifically discussed the CPT report of 6 July 2007 and took into account various recommendations of the CPT.

In the meeting of Parliament on 20 September 2007, the draft law was considered in a second and third reading<sup>11</sup> and passed unanimously by Parliament.

In summary, the provisions concerning the reform of pre-trial detention (Law of 20 September 2007 amending the Code of Criminal Procedure, LGBl. 2007 No. 292<sup>12</sup>; Law of 20 September 2007 amending the Juvenile Court Act, LGBl. 2007 No. 293<sup>13</sup>; Law of 20 September 2007 amending the Mutual Legal Assistance Act, LGBl. 2007 No. 294<sup>14</sup>) will already enter into force on 1 January 2008 – at the same time as the total revision of the Execution of Sentences Act, LGBl. 2007 No. 295<sup>15</sup> (see enclosed legislative texts, Enclosures 1 – 7).

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<sup>8</sup> See <http://bua.gmg.biz/BuA/index.jsp> (Note: Search by Report and Application (BuA) number: 2007 No. 49).

<sup>9</sup> <http://www.landtag.li/protokolle/default.aspx?mode=lp&prim=2007&value=5&id=2791&backurl=?mode=lp%26prim=2007%26value=5>.

<sup>10</sup> See <http://bua.gmg.biz/BuA/index.jsp> (Note: Search by Report and Application (BuA) number: 2007 No. 92).

<sup>11</sup> <http://www.landtag.li/protokolle/default.aspx?mode=lp&prim=2007&value=9&id=2878&backurl=?mode=lp%26prim=2007%26value=9>.

<sup>12</sup> <http://www.llv.li/pdf-llv-rdr-2007292.doc-3.pdf>.

<sup>13</sup> <http://www.llv.li/pdf-llv-rdr-2007293.doc-2.pdf>.

<sup>14</sup> <http://www.llv.li/pdf-llv-rdr-2007294.doc-2.pdf>.

<sup>15</sup> <http://www.llv.li/pdf-llv-rdr-2007295.doc-2.pdf>.

**Paragraph 13:**

***The CPT requests to be informed about any changes made to the legal framework concerning the detention of foreign nationals under aliens legislation.***

As already mentioned by the CPT, the Government currently plans to revise the provisions on detention of foreign nationals under aliens legislation, in both the Foreigners Act and the Asylum Act (see also paragraph 29). In contrast to the current practice, the provisions on length of detention will also be included in both laws.

With respect to the timeframe for the revision of the Foreigners Act, the draft law is currently undergoing consultations<sup>16</sup> and is expected to be considered by Parliament in the course of 2008. Moreover, the draft law ("consultation report") concerning revision of the Asylum Act is expected to be adopted by the Government at the beginning of 2008 and should also be considered by Parliament in the course of the 2008.

## **2. Ill-treatment**

**Paragraph 15:**

***The CPT recommends to the Liechtenstein authorities that the necessary steps to be taken to ensure that the precepts set out in paragraph 15 are respected by law enforcement officials.***

***The CPT recommends that police officers be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) are not acceptable and will be the subject of severe sanctions.***

It should be noted at the outset that the National Police only uses force when apprehending a suspect – and in general when using forcing against persons – as a last resort, and only in accordance with the principle of proportionality (see articles 23 and 27 of the Police Act<sup>17</sup>). With respect to the apprehension of suspects, this topic is a regular subject of basic and continuing training, placing great emphasis on proper apprehension technique (i.e. only using as much force as absolutely necessary) and conduct vis-à-vis the suspect. It is also strongly emphasized that verbal abuse of persons apprehended by police officers is not tolerated and is subject to disciplinary and/or criminal sanctions.

Since no complaints against police officers have been filed in this regard in recent years,<sup>18</sup> it is assumed that the intervening officers duly implement and comply with the applicable instructions and requirements.

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<sup>16</sup> The consultation period ends on 15 February 2008, see consultation report:  
[http://www.llv.li/pdf-llv-rk-vernehmml\\_2007\\_auslaenderinnen\\_und\\_auslaender\\_ohne\\_ewr.pdf](http://www.llv.li/pdf-llv-rk-vernehmml_2007_auslaenderinnen_und_auslaender_ohne_ewr.pdf).

<sup>17</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=1989048.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1989048.pdf).

<sup>18</sup> See also comments on paragraph 16.

Contrary to the view expressed by the CPT, however, the National Police believes that it may be necessary in very rare individual cases<sup>19</sup> to prevent the apprehended suspect from seeing and thereby identifying the police officer immediately upon apprehension and during transport, by means of a head covering<sup>20</sup>. This may be necessary to ensure the personal safety of the officers involved in the apprehension, if the suspect is an extremely dangerous violent criminal. The head covering also has the effect of preventing identification of the apprehended violent criminal by outsiders (passers-by, the press, etc.), for instance during transfer from a building into a vehicle, which also serves the protection of his or her rights of personality. In summary, this measure is not unusual worldwide and should be retained in Liechtenstein in rare individual cases.

**Paragraph 16:**

***The CPT requests detailed information regarding the procedures in force for examining complaints of police ill-treatment.***

Where complaints against police officers arise alleging ill-treatment of prisoners – as is the case for any complaint accusing a police officer of a criminal act – the Office of the Public Prosecutor is informed immediately, which then initiates the necessary investigations (e.g. on grounds of tormenting or neglecting a prisoner under § 312 of the Penal Code (StGB)). In parallel, disciplinary proceedings are initiated against the accused police officer; depending on the type and gravity of the allegation, the Chief of Police may suspend the police officer from duty until the matter has been fully clarified.

In summary, the current complaints system allows for both criminal and administrative proceedings; in both types of proceedings, no significant problems have arisen in practice, so that the public confidence in the complaints system desired by the CPT certainly appears to be warranted.

***The CPT requests the following information for the years 2005 to 2007: the number of complaints of ill-treatment filed against police officers; the number of disciplinary and/or criminal proceedings initiated following those complaints; an account of disciplinary and/or criminal sanctions imposed as a result of such proceedings.***

According to the National Police, no complaints of ill-treatment of detained persons have been filed against police officers in the entire period mentioned. Accordingly, there have also been no disciplinary proceedings against police officers.

The Liechtenstein Office of the Public Prosecutor likewise knows of no criminal proceedings against police officers connected with torture or inhuman treatment. However, police officers have been accused of other offenses in two criminal proceedings:

In 2005, officers of the National Police were accused of battery 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.

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<sup>19</sup> The National Police states that such individual cases occur perhaps once in three years.

<sup>20</sup> This is a black "bag", which is permeable to air and does not impede breathing, but rather only serves to prevent identification.



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 (while brandishing a pitchfork) 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, judicial proceedings were initiated, which are still pending before the court.

In 2007, no complaint has been received by the Office of the Public Prosecutor in this regard.

### **3. Safeguards against ill-treatment of persons detained by the police**

#### ***Paragraph 19:***

***The CPT comments that it trusts that draft Section 128a of the Code of Criminal Procedure, according to which “every apprehended person must be made aware, at the time of apprehension or immediately thereafter, [...] that he has the right to inform a relative or another person of trust [...]”, will be adopted without delay.***

At the outset, the Government would like to express its satisfaction that the CPT also welcomes the Liechtenstein efforts to immediately introduce § 128a of the (amended) Code of Criminal Procedure (StPO). This new provision, which enters into force on 1 January 2008, reads as follows:

*"Every apprehended person must be made aware, at the time of apprehension or immediately thereafter, of the offense he is suspected of and the reason for his apprehension, that he has the right to inform a relative or another person of trust and a defense lawyer, and that he has the right to remain silent. He shall be made aware that any statement he makes may be used for his defense, but also as evidence against him."*

Nota bene, this includes the right to consult a defense lawyer (i.e. also to confer with the defense lawyer).<sup>21</sup> In summary, the Liechtenstein authorities assume that the CPT's trust in the immediate introduction of § 128a StPO has been fulfilled.

***The CPT recommends that the right to inform a relative or person of one's choice of one's situation, from the very outset of deprivation of liberty, be formally guaranteed to all persons deprived of their liberty (i.e. not only to criminal suspects, but also to persons placed in administrative detention or held under aliens legislation, etc.).***

With respect to the concerns expressed during the CPT's visit that it was not guaranteed that all detained persons fully enjoyed the formal right to inform a relative or a person of their choice from the very outset of deprivation of liberty, these concerns are unjustified.

Upon apprehension pursuant to a suspected violation of aliens legislation, article 13d ANAG<sup>22</sup> applies, according to which the State must ensure that a person in Liechtenstein designated by the apprehended person is informed, and that the apprehended person may also consult with his legal representative orally and in writing.

With respect to administrative detention, the Government refers to article 117, para. 7 of the National Administration Act<sup>23</sup>, according to which apprehension must be executed pursuant to an

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<sup>21</sup> See also § 30 para. 3 of the amended Code of Criminal Procedure, which enters into force on 1 January 2008.

<sup>22</sup> Swiss Federal Law on the Residence and Settlement of Foreigners (ANAG) of 26 March 1931.

arrest warrant issued by the Court of Justice upon application by the administrative authority. The arrest warrant must be executed by the police. Police instructions contain a corresponding provision.

**Paragraph 20:**

***The CPT recommends and calls upon the Liechtenstein authorities to amend the relevant legislation (in particular, the Code of Criminal Procedure) to ensure that the right of access to a lawyer is formally guaranteed to all persons deprived of their liberty from the very outset of their deprivation of liberty, in the light of the remarks made in paragraph 20.***

The CPT properly remarks that, according to the current police instructions, this information is only provided to the detained person at the time of first questioning by the police, and not already at the time of apprehension. The current problematic situation is, however, remedied by the new § 128a StPO, since this information will henceforth already be provided at the time of apprehension or immediately afterwards. This new provision entails that the police instructions will be modified accordingly, as soon as the provision enters into force on 1 January 2008.

**Paragraph 21:**

***The CPT wants to be informed about the content of new legal provisions, if they were to be adopted, relating to the right of persons in police custody to have access to a doctor.***

As already noted by the CPT in its report, the current Law of 18 December 1985 on Public Health (Public Health Act), LGBI. 1986 No. 12,<sup>24</sup> is undergoing a total revision, so that the new draft law was considered in a second and third reading by Parliament in its meeting from 12 to 14 December 2007 (if no referendum is called, entry into force is expected at the end of the referendum period on 1 February 2008). Even though the current provisions in article 7a para. 3 (b) of the Public Health Act are no longer explicitly contained in the draft law in the same form,<sup>25</sup> the Liechtenstein authorities are aware of the situation and – as soon as the revision of the law is in force – will ensure that persons in police custody in Liechtenstein will not experience any negative consequences with respect to access to a doctor pursuant to the (envisaged) total revision of the Public Health Act.

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<sup>23</sup> LGBI. 1922 No. 24, Law of 21 April 1922 on the National Public Administration (the administrative authorities and their auxiliary bodies, administrative proceedings, coercive and criminal administrative proceedings), National Administration Act; [http://www.gesetze.li/get\\_pdf.jsp?PDF=1922024.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1922024.pdf).

<sup>24</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=1986012.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1986012.pdf).

<sup>25</sup> See article 50 para. 1 (d) of the draft law: <http://bua.gmg.biz/BuA/index.jsp> (Note: Search by Report and Application (BuA) number: 2007 No. 112 and 147).

**Paragraph 22:**

***The CPT recommends and calls upon the Liechtenstein authorities to take the necessary measures to ensure that a form setting out the rights of persons deprived of their liberty (including the right to inform a person of one's choice of one's situation, and the rights of access to a lawyer and to a doctor) is systematically handed to all such persons from the very outset of their deprivation of liberty. This form should be worded in an easily understandable manner and be available in an appropriate range of languages. Further, the persons receiving it should sign a statement confirming that they have been informed of their rights in a language they understand.***

Already under current law, every detained person is informed of his or her rights upon initial questioning by the police – including the right to inform a relative, a lawyer, and, in the case of foreign detainees, the right to inform their consulate.

In the case of language difficulties, an interpreter is already involved at this point. Both the notification of legal rights and the statements made in this regard are recorded in writing.

This record of the questioning – including the notification of legal rights – is then presented to the detained person (and translated, if necessary) for review and signature, and the detained person receives a copy. In summary, Liechtenstein considers this CPT recommendation already to be implemented, given that it does not appear necessary to draft an additional form.

**Paragraph 23:**

***The CPT recommends, in the framework of the current legislative reforms, to amend the Law on Juvenile Justice with a view to ensuring compliance with the precepts set out in paragraph 23.***

At the outset, it should be noted that juveniles are only very rarely detained in Liechtenstein. In regard to the provision in § 21a para. 1 of the Juvenile Court Act<sup>26</sup> criticized by Liechtenstein, it should be noted that this norm introduced by the Law of 17 March 2006 amending the Juvenile Court Act, LGBl. 2006 No. 101, is based on the corresponding Austrian model<sup>27</sup>. In this connection, it should be noted that the CPT also recommended upon its visit to Austria from 14 to 23 April 2004 that the presence of a person of trust should always be mandatory.<sup>28</sup> Even though the CPT's concern could be met in principle, this provision will be retained – as in Austria – given that the juvenile should not be forced to consult a person of trust. There may be good reasons (e.g. shame, etc.) why the juvenile may not want to divulge his misconduct. Since Liechtenstein in principle wants to continue to follow the Austrian model, and since no amendments are underway in Austria (so far), Liechtenstein does not – at least for now – see a need for amendment.

Liechtenstein will observe further developments in this regard and, if appropriate, come back to this recommendation by the CPT.

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<sup>26</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=1988039.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1988039.pdf).

<sup>27</sup> See § 37 of the Austrian Juvenile Court Act 1988, BGBl. No. 599/1988, most recently amended by BGBl. I No. 19/2001.

<sup>28</sup> As the response by Austria to the CPT indicates, the Austrian Federal Ministry of Justice intends to reconsider the question of presence of a person of trust.

***The CPT recommends that the information leaflet referred to in paragraph 22 contain a special section relating to the rights of juveniles.***

It should be emphasized that the National Police intends to include such a section in its information leaflet or to draft a separate information leaflet specifically informing apprehended juveniles of their rights. The recommendation of the CPT will be soon be fully implemented.

Moreover, based on the Report and Application of the Government to the Parliament of the Principality of Liechtenstein concerning the Total Revision of the Youth Act of 19 December 1979 (LGBI. 1980 No. 30) (new title: Children and Youth Act) and Amendment of the Penal Code<sup>29</sup> of 27 March 2007, a separate section on "Support Provided in Cases of Child and Juvenile Delinquency" shall be introduced. These provisions are intended to systematically guarantee the collaboration or involvement of the Office of Social Affairs in cases of juvenile delinquency. This fully implements the recommendation of the CPT.

***Paragraph 24:***

***The CPT comments that steps should be taken with a view to recording in the police custody register not only the day, but also the time, of release or transfer.***

The National Police indicates that this recommendation of the CPT has already been implemented.

***Paragraph 25:***

***The CPT requests information about the measures taken by the Liechtenstein authorities, in the context of the agreements concluded with Switzerland and Austria on the setting-up of border posts, with a view to ensuring that all the safeguards mentioned in paragraph 17 are applied at border posts.***

In this connection, it should be mentioned at the outset that – based on the Customs Treaty between Switzerland and the Principality of Liechtenstein – the Swiss authorities carry out their respective responsibilities (on Liechtenstein territory) and, for instance, also perform border controls. If, in the course of their official duties, the Swiss customs officials suspect criminal conduct, they must first consider the matter as the "ascertaining authority" and take the appropriate measures (e.g. searches of vehicles and persons, preliminary stopping of person in danger of absconding, etc.), then immediately inform the Liechtenstein authorities, specifically the Liechtenstein National Police.

As soon as the National Police is informed, the police officers proceed as quickly as possible to the border post and review the matter on site (e.g. questioning of a suspect). If grounds for detention exist, the stopped person is at this time at the latest informed of his or her rights. It should be emphasized that the Liechtenstein police officers in fact arrive at the border post very quickly, given that the distance is generally only a few kilometers.

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<sup>29</sup> See <http://bua.gmg.biz/BuA/index.jsp> (Note: Search by Report and Application (BuA) number: 2007 No. 28).

In conclusion, it should be noted that the Government only learned through the CPT report that a detained person apparently claimed to have been kept at the Schaanwald border post (at the Swiss Federal Customs Office for the Principality of Liechtenstein) in handcuffs for several hours without being informed of his rights. Even though the Liechtenstein authorities find this claim difficult to comprehend, the accusations and the matter are already being investigated; these inquiries are still underway; depending on the outcome of these inquiries, appropriate steps will be initiated.

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

##### ***Paragraph 26:***

***The CPT comments that if, exceptionally, the official capacity of the multi-occupancy police custody cell at Vaduz Prison were to be reached in future, additional accommodation should be made available.***

It should be noted that the maximum capacity of the multi-occupancy cell has never been reached in the past, so that this question should be considered purely hypothetical. In the event this should nevertheless occur in the future, however, appropriate measures will be taken (e.g. accommodation of the persons concerned in the generally empty women's wing or in free cells in the National Prison – including any necessary transfers of Liechtenstein sentenced prisoners to Austria, in order to create free capacity in Vaduz).

#### **B. Vaduz Prison**

##### **1. Preliminary remarks**

##### ***Paragraph 28:***

***The CPT requests information about the progress made as regards the revision of the Law on the Execution of Sentences and a copy of the new Law once it is adopted.***

With its decision of 24 April 2007, the Government adopted its Report and Application to the Parliament of the Principality of Liechtenstein concerning Total Revision of the Execution of Sentences Act and Amendment of other Laws<sup>30</sup>, No. 49/2007. This report discussed the substance of the CPT delegation's visit in February 2007. The draft law submitted by the Government was considered in a first reading by the Parliament of the Principality of Liechtenstein on 24 May 2007<sup>31</sup>.

On 21 August 2007, the Response of the Government to the Questions Raised by the Parliament of the Principality of Liechtenstein in its First Reading concerning the Total Revision of the Execution of Sentences Act and the Amendment of other Laws<sup>32</sup>, No. 93/2007, was adopted, in which the Government specifically discussed the present CPT report of 6 July 2007 and took into account several recommendations of the CPT.

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<sup>30</sup> See <http://bua.gmg.biz/BuA/index.jsp> (Note: Search by Report and Application (BuA) number: 2007 No. 50).

<sup>31</sup> <http://www.landtag.li/protokolle/default.aspx?mode=lp&prim=2007&value=5&id=2792&backurl=?mode=lp%26prim=2007%26value=5>.

<sup>32</sup> See <http://bua.gmg.biz/BuA/index.jsp> (Note: Search by Report and Application (BuA) number: 2007 No. 92).

In its meeting on 20 September 2007, Parliament considered the draft Execution of Sentences Act in a second and third reading<sup>33</sup> and passed it unanimously. In summary, the Execution of Sentences Act of 20 September 2007<sup>34</sup>, LGBI. 2007 No. 295, the Law of 20 September 2007 amending the Code of Criminal Procedure (StPO)<sup>35</sup>, LGBI. 2007 No. 296, the Law of 20 September 2007 amending the Law on Cooperation with the International Criminal Court and the other International Tribunals<sup>36</sup>, LGBI. 2007 No. 297 and the Law of 20 September 2007 amending the Complaints Commission Act<sup>37</sup>, LGBI. 2007 No. 298, will already enter into force on 1 January 2008 – at the same time as the abovementioned provisions on reform of pre-trial detention<sup>38</sup> (see enclosed legislative texts, Enclosures 1 to 7).

**Paragraph 29:**

***The CPT comments that it would be desirable that the situation of immigration detainees be governed by specific rules, reflecting their particular status.***

As already explained in the remarks on paragraph 13, the Government currently plans to revise the provisions on detention of foreign nationals under aliens legislation, both in the Foreigners Act and in the Asylum Act. In contrast to current practice, the provisions concerning the special situation of persons who have been detained on suspicion of violating aliens legislation provisions will be explicitly set out in both laws. Additional information on the timeframe is contained in the remarks on paragraph 13.

## **2. Conditions of detention**

**Paragraph 35:**

***The CPT reiterates its recommendation that the Liechtenstein authorities persevere in their efforts to develop the programme of activities available to all inmates at Vaduz Prison. The longer the term of detention, the more varied these activities should be.***

The Liechtenstein authorities – and in particular the National Prison in Vaduz – will persevere in their efforts to develop an appropriate program of activities available to all inmates at the National Prison, in accordance with the possibilities of the facility. The new Execution of Sentences Act entering into force on 1 January 2008 is seen as a further opportunity to live up to this recommendation.

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<sup>33</sup> <http://www.landtag.li/protokolle/default.aspx?mode=lp&prim=2007&value=9&id=2879&backurl=?mode=lp%26prim=2007%26value=9>.

<sup>34</sup> <http://www.llv.li/pdf-llv-rdr-2007295.doc-2.pdf>.

<sup>35</sup> <http://www.llv.li/pdf-llv-rdr-2007296.doc-2.pdf>.

<sup>36</sup> <http://www.llv.li/pdf-llv-rdr-2007297.doc-5.pdf>.

<sup>37</sup> <http://www.llv.li/pdf-llv-rdr-2007298.doc-2.pdf>.

<sup>38</sup> See remarks on paragraph 11.

**Paragraph 36:**

***The CPT comments that it invites the Liechtenstein authorities to reconsider the question of the use of the exercise yard at Vaduz Prison, and particularly the possibility of access to it for female inmates.***

Originally, female inmates also had the option of using the exercise yard. Some male inmates, who had a direct view of the main exercise yard from their cells, took advantage of this fact, however, and harassed the female inmates with insinuating calls and whistles. For this reason – and since female inmates at the National Prison are very rare – exercise for female inmates was subsequently restricted to the courtyard on the roof of the prison. However, the Liechtenstein authorities take this invitation of the CPT as an occasion to review the existing practice and to determine whether or to what extent certain measures can be taken to again grant female inmates exercise in the main exercise yard in the future.

### **3. Health care**

**Paragraph 38:**

***The CPT reiterates its recommendation to the Liechtenstein authorities that regular visits by a nurse to Vaduz Prison to be organised.***

With respect to implementation of this recommendation, the authorities concerned already considered the issue several years ago. However, they determined that there is no demand for a nurse who would be exclusively responsible for the prisoners at the National Prison, or at least the demand does not call for such a full-time position: it would be difficult to justify additional nursing staff exclusively for the National Prison. This situation has not changed since.

It should be specially noted in this connection that the director of the National Prison newly appointed in February 2007 has medical skills<sup>39</sup>, so that she would be able to identify diseases.<sup>40</sup>

It should also be noted that the inmates are regularly given psychological counseling by staff members of the Therapeutic Services Division of the Office of Social Affairs. Every 14 days, a psychologist of the Therapeutic Services Division conducts a psychological consultation. The inmates can voluntarily take advantage of this offer.

The inmates continue to be given social work counseling by the Probation Service, pursuant to a service agreement between the Probation Service and the Office of Social Affairs. This social work is governed by § 74 of the new Execution of Sentences Act and aims to provide a network of care for inmates, covering client-oriented and organizational aspects, mediation of contacts with relatives, clarification of financial and insurance questions, and care for released inmates.

Overall, the recommendation of the CPT therefore appears to be already largely fulfilled.

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<sup>39</sup> The new director of the National Prison is trained as a medical nursing professional (DN II and specialization in psychiatry).

<sup>40</sup> Note: To prevent conflicts of authority, the responsibility of the director of the National Prison in this context will essentially be to refer sick inmates to the appropriate offices – especially the resident physician – or to notify these offices.

Nevertheless, to implement the recommendation of the CPT even better, further alternatives are currently under review. For instance, healthcare workers of the emergency services (Liechtenstein Red Cross) could be entrusted with this responsibility. Another option would be cooperation with the Vaduz National Hospital. It will be reviewed whether a nurse could dispense medicine each morning and evening, document communications by the inmates and their own observations, and relay them to the resident physician.

**Paragraph 39:**

***The CPT recommends that the involvement of prisoners in the distribution of medicines at Vaduz Prison be immediately brought to an end.***

Immediately after the visit by the CPT delegation, the practice of involving prisoners in the distribution of medicines at the National Prison was discontinued by the directorate of the National Prison. The recommendation of the CPT has therefore been met.

**Paragraph 40:**

***The CPT reiterates its recommendation to the Liechtenstein authorities that the necessary measures be taken to ensure that all remand and sentenced prisoners, as well as immigration detainees, are examined by a doctor, or by a qualified nurse reporting to a doctor, within 24 hours of their admission to Vaduz Prison.***

Already under current law, prisoners are examined by a doctor within 24 hours of their admission.<sup>41</sup>

Moreover, article 125 para. 5 sentence 1 of the new Execution of Sentences Act entering into force on 1 January 2008 provides that "... *sentenced prisoners shall be (...) examined by a doctor upon admission or as soon as possible thereafter...*". The comments on article 125 in the relevant Report and Application<sup>42</sup> further explain this provision, according to which "... *this examination (...) shall be carried out within 24 hours and documented pursuant to the recommendation of the Committee for the Prevention of Torture (CPT) of the Council of Europe...*"<sup>43</sup>. The new provision aims to further hasten the medical examination. The time of this examination shall also be attestable.

In the practice of the National Prison, all inmates expected to remain at the National Prison for more than 24 hours are reported to the physician appointed by the Government for the National Prison immediately upon admission, so that the relevant examinations may be carried out. The Government, acting as the supervisory authority, and the newly created inspection commission reporting to the Government will regularly monitor compliance with this provision.<sup>44</sup> The recommendation of the CPT is therefore being met.

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<sup>41</sup> See article 9 para. 3 of the current Enforcement of Sentences Act.

<sup>42</sup> See footnote 30.

<sup>43</sup> See Report and Application of the Government of 24 April 2007, No. 50/2007, page 77.

<sup>44</sup> Please note that the relevant comments in the CPT report indicate that the CPT – for reasons of data protection - only had limited access to the medical files of already released prisoners (who were no longer able to authorize access to their files). The planned introduction of relevant documentation concerning the time of medical examinations should allow this recommendation to be fully met in the future.



**Paragraph 41:**

***The CPT recommends that measures be taken so as to guarantee that all medical examinations of prisoners hospitalised in Vaduz Hospital are conducted out of the hearing and – unless otherwise explicitly requested by the medical or nursing staff concerned in a specific case – out of the sight of police officers.***

Compliance with this recommendation of the CPT has long been the permanent practice in Liechtenstein. All the more, the Government expresses its astonishment that – according to the Committee's explanations of this recommendation – the CPT delegation indicates that it received information that medical or nursing staff at the National Hospital in Vaduz had been accompanied by at least one police officer when entering the examination room, and that the police officer had stayed in the examination room during the entire consultation. The Government will investigate this matter, and it shares the view of the Committee that medical examinations of prisoners should always respect the dignity of the prisoner.<sup>45</sup> Medical examinations or treatments should always be conducted out of the hearing and – unless otherwise explicitly requested by the medical or nursing staff – out of the sight of the police officers; where necessary, technical aids (e.g. panic buttons) may also be used for this purpose.

Medical examinations or treatments out of the hearing and sight of police officers may, however, be limited by the need to ensure the safety of the medical and nursing staff. So that the medical and nursing staff can gain a complete picture of the situation and decide on a police escort, the staff must be given information in advance on how the aggressiveness and danger of absconding of the patient is classified. For this reason, every person detained in the National Prison is subject to a security classification. Based on the classification of the prisoner, the requirements for transferring the prisoner under escort are defined for the escorting police officers for each specific transfer.

#### **4. Other issues**

**Paragraph 42:**

***The CPT requests detailed information regarding the status and training of the auxiliary staff (security officers) employed at Vaduz Prison.***

The employees referred to as "auxiliary staff" by the CPT are persons who have been appointed by an order of the Government as enforcement officers on a part-time (hourly) basis. They therefore enjoy the same status and powers as full-time employees. These part-time enforcement officers receive internal training for the tasks assigned to them.

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<sup>45</sup> See also article 21 para. 1 sentence 1 of the new Enforcement of Sentences Act, according to which the prisoners shall be treated calmly, seriously, consistently, fairly, and with respect for their honor and dignity. See also article 24 para. 1 sentence 2 and article 39 para. 2 sentence 2 of that Act.

**Paragraph 44:**

***The CPT recommends that the relevant provisions of the draft Law on the Execution of Sentences be revised in such a way as to facilitate regular access to the telephone for sentenced prisoners.***

The formulations of the criticized legal provisions (article 88<sup>46</sup> of the new Execution of Sentences Act) correspond almost verbatim to the Austrian model<sup>47</sup>. In this connection, it should be noted that the CPT never criticized this provision in its visits to Austria, although the practical implementation in some Austrian prisons was criticized.<sup>48</sup>

With regard to the practical implementation of this provision in the National Prison in Vaduz, the Government will inform the directorate of the National Prison of the complaints made by the CPT in Austrian prisons. The directorate of the National Prison will be called upon to fulfill these recommendations.

***The CPT comments that it trusts that the draft amendments to the Code of Criminal Procedure referred to in paragraph 44, concerning contact with the outside world for remand prisoners, will be adopted.***

The provisions noted by the CPT, increasing the visit entitlement to a minimum of 30 minutes twice a week and recognizing the right of remand prisoners to have access to the telephone by making express provision for this right in the (amended) Code of Criminal Procedure<sup>49</sup>, have meanwhile been adopted unchanged by Parliament and will enter into force on 1 January 2008.

**Paragraph 45:**

***The CPT reiterates its recommendation that a special register be established for the use of the observation cell at Vaduz Prison.***

It should be noted that no authority has any need for such a register and that it would therefore be kept solely for the needs of the CPT. Since the observation cell is only used very rarely and, moreover, since it has been modified according to the recommendations of the CPT since its last visit, the establishment of a separate register would appear disproportionate.

Nevertheless, the Government will review whether such a register can be integrated into the existing register of the National Prison.

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<sup>46</sup> Article 88 Telephone conversations: When there are reasons deserving to be taken into account, sentenced prisoners must be allowed to make phone calls, especially with relatives, advisers, and social institutions, as well as with public authorities, legal advisers, and care facilities (article 81 paras. 4 to 6). The content of the conversations conducted between the sentenced prisoners and the persons and offices referred to in article 81, paras. 4 to 6 shall not be monitored; in other cases, monitoring of the content of conversations may be waived if no concerns arise. If the content of the conversation is monitored, article 85 paras. 3 and 4 and article 86 shall apply *mutatis mutandis*. Article 83 shall apply *mutatis mutandis* for the defrayal of costs.

<sup>47</sup> See § 96a of the Austrian Enforcement of Sentences Act (Federal Law of 26 March 1969 on the Enforcement of Sentences of Imprisonment and Preventive Measures associated with Imprisonment (Enforcement of Sentences Act), StF: BGBl. No. 144/1969); see also order of the Federal Ministry of Justice of 12 September 2002, JMZ 44504/8-V.6/2002, according to which nothing shall prevent approval of several periodic appointments for conversations fixed in advance; moreover, it should not be absolutely necessary to approve each appointment pursuant to an individual request; however, it is recommended to only grant such approvals for a period of time appropriate to the individual circumstances, and the preconditions should be periodically reviewed during the time period approved.

<sup>48</sup> See report on the CPT visit to Austria from 26 September to 7 October 1994, page 52, para. 135 (<http://www.cpt.coe.int/documents/aut/1996-28-inf-fra.pdf>) and the response by Austria, page 45, on para. 135 (<http://www.cpt.coe.int/documents/aut/1996-29-inf-eng.pdf>).

<sup>49</sup> § 137 of the (amended) Code of Criminal Procedure.

**Paragraph 47:**

***The CPT recommends that the necessary measures be taken to ensure that the principles set out in paragraph 47 are respected whenever means of restraint are applied to persons placed in the observation cell at Vaduz Prison.***

The principles referred to by the CPT in paragraph 47 are already provided for under current law (article 13 of the old Execution of Sentences Act, except for the unrestricted notification of a doctor and recording of cases in a special register) and under future law (article 96 of the new Execution of Sentences Act, except for recording of cases in a special register).

The National Prison in Vaduz is currently undertaking to implement the necessary changes with a view to entry into force of the new Execution of Sentences Act. The measures and processes concerning the use of means of restraint applied to persons placed in the observation cell will be newly defined, so that immediate notification of the resident physician is also ensured. With respect to the demand for recording of cases in a special register, please refer to the remarks on paragraph 45. Accordingly, measures will be implemented as of 1 January 2008 that fulfill these recommendations of the CPT.

**Paragraph 48:**

***The CPT comments that express mention should be made in the new law of the entitlement of members of the [inspection] commission to speak in private to detained persons during their visits.***

Article 17 para. 5 of the new Execution of Sentences Act expressly provides that the members of the inspection commission may speak with the prisoners detained in the National Prison outside the presence of other persons. This concern of the CPT has already been taken into account by the Liechtenstein legislature and has been fully implemented in the new Execution of Sentences Act.

***The CPT comments that it trusts that the [inspection] commission, like the President of the Court of first instance, will prove to be a frequent visitor to Vaduz Prison.***

Article 17 para. 5 of the new Execution of Sentences Act provides that the commission shall visit the National Prison without advance notice once each quarter. The commission has the legal right to make additional visits as it sees fit.

This concern of the CPT is therefore also taken into account by the new Execution of Sentences Act (in continuation of existing practice).

**Paragraph 49:**

***The CPT comments that a new and more comprehensive information sheet should be elaborated in an appropriate range of languages (providing detailed information on the rights of detained persons, complaints procedures, etc.).***

Implementation of this recommendation will be realized as part of the necessary measures upon entry into force of the new Execution of Sentences Act on 1 January 2008. Please also refer to the remarks in paragraphs 22 and 23.

### **C. Involuntary forensic placement**

#### ***Paragraph 51:***

***The CPT comments that it would be desirable for the court, before deciding on a preventive measure under Sections 21 to 23 of the Penal Code, to request a medical report from a second doctor with professional qualifications in psychiatry (i.e. not from the same doctor who had supported the initial provisional placement).***

The report of the CPT – and therefore this concern – has already been brought to the attention of the Court of Justice. Consideration of this concern falls within the judicial independence of the courts, however.

It should be noted that the most recent jurisprudence of the Supreme Court (not yet published) found that, in general, only one expert opinion is needed. Depending on the type of case, however, a second independent expert opinion may be necessary.

#### ***Paragraph 52:***

***The CPT requests comments by the Liechtenstein authorities on the fact that in the case referred to in paragraph 50, no judicial review had apparently been carried out since the initial placement decision in October 2004.***

The Liechtenstein authorities have clarified the case referred to by the CPT with the competent judge. In summary, the case is as follows:

Pursuant to the judgment of the Court of Justice acting as the Criminal Court on 12 October 2004, effective the same date, the person concerned was placed in an institution for mentally disturbed offenders, based on § 21 para. 1 of the Penal Code (StGB). At least once a year, the Court of Justice acting as the Criminal Court must, pursuant to § 25 para. 3 StGB, review *ex officio* whether the continued placement of the person concerned is still necessary. These required reviews have so far been carried out by the Court of Justice acting as the Criminal Court. Based on the psychiatric opinions obtained, which always clearly affirmed the necessity of continuing the placement of the person in the institution, the necessity of continued execution of the measures pursuant to § 21 para. 1 StGB was initially affirmed by an uncontested and binding decision of the Court of Justice acting as the Criminal Court on 11 January 2006 and then a second time – again by an uncontested and binding decision – by the same court on 27 March 2007, and continued placement of the person in the institution was ordered. The next review of the necessity of continued placement in the institution, based on a psychiatric opinion, is scheduled for the end of January 2008. It should be mentioned that the rights of the person are also protected in that, according to the records of the Court of Justice acting as the Family Court, an "official adviser" was appointed for the person, to whom the abovementioned decisions of the Court of Justice acting as the Criminal Court dated 11 January 2006 and 27 March 2007 (with which continued placement in the institution was ordered) were delivered, with the possibility of appeal. Furthermore, the records indicate that Göllersdorf Prison<sup>50</sup> and its head of psychiatry have apparently also periodically reviewed the continued necessity of execution of the measures pursuant to § 21 para. 1 StGB and so far have likewise affirmed the decision to continue placement.

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<sup>50</sup> The person in question is currently serving execution of measures in this Austrian institution.

Overall, therefore, the legal provisions have been complied with in this case as well, and the rights of the person concerned are being protected.

***The CPT would like to know whether, in the context of placement review procedures, the persons concerned have legal representation (including legal assistance for those who are not in a position to pay for a lawyer themselves).***

The provisions on criminal proceedings apply *mutatis mutandis* to placement review procedures, with the deviation that, in regard to defense, the person concerned must already be represented by a defense lawyer in the preliminary proceedings (§ 340 para. 2 (1) of the Code of Criminal Procedure<sup>51</sup>)

If a person is unable to bear the costs of defense without diminishing the livelihood necessary for a simple lifestyle for himself and his dependent family, the court shall, on application of the person concerned, decide that a defense lawyer shall be provided without cost to the person concerned, if and to the extent that this is necessary in the interest of the administration of justice, and especially in the interest of a suitable defense (see § 26 of the Code of Criminal Procedure).

#### **D. Involuntary civil placement**

##### **3. St. Mamertus Nursing Home**

#### ***Paragraph 62:***

***The CPT recommends that staffing levels at St. Mamertus Nursing Home be kept under review.***

The staffing level mentioned in the report (0.45 per bed) was calculated by the delegation member of the CPT on the basis of the submitted staff roster and apparently includes a calculation error. The actual staffing level at the time of the survey was 0.78 per bed, taking the entire staff into account, and 0.58 per bed, taking only nursing staff into account.

The statement is correct that the night-duty shift from 8:15 p.m. to 7 a.m. is covered by two staff members (one qualified nurse and one auxiliary staff member). It should be noted that, when necessary (higher nursing demands, emergencies, terminal care, etc.), additional stand-by staff is available.

Overall, the recommendation of the CPT therefore appears to be implemented.

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<sup>51</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=1988062.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1988062.pdf).

#### 4. Safeguards

##### a. initial placement and discharge procedures

##### ***Paragraph 66:***

***The CPT requests information about whether the right to request at any time one's own discharge from a psychiatric/social welfare establishment is formally guaranteed.***

It is correct that, according to article 11 et seq. of the Social Welfare Act<sup>52</sup>, the right to request at any time one's own discharge is not formally provided. However, article 13 para. 2 of the Social Welfare Act provides that the person to be placed or retained must be heard in person before the court. This formulation is interpreted by the courts to mean that the person must also be able to request his or her own discharge. The court decisions in this regard indicate without a doubt that such discharge requests are in fact made by the persons concerned.

In the case of a placement/retention pursuant to the Social Welfare Act, a legal adviser is appointed for the person concerned. This does not limit the legal capacity of the person. Upon receipt of a request for discharge submitted by the person himself or herself, the court conducts proceedings to review the necessity of continued retention. Practice also indicates that many patients placed against their will very quickly file appeals with the Court of Appeal contesting their placement. Access to the court is therefore guaranteed for the persons concerned.

Nevertheless, a clearer formulation in the Social Welfare Act will be considered as part of a future revision.

In this connection, please refer to Enclosure 9 a to f, which show that the demands mentioned have already been fully met in substance. The formal basis can currently be found in the civil placement relationship; the Government wishes to communicate in this regard that the Liechtenstein Foundation for Aid to the Sick and Senior Citizens is currently working on the development of written nursing home agreements, in which the points mentioned are taken into account.

##### ***Paragraph 67:***

***The CPT recommends that steps be taken (including at a legislative level) to ensure that, as a general rule, every person who is placed in a psychiatric/social welfare establishment is promptly heard in person by a judge (including in emergency placement procedures).***

The Liechtenstein authorities will take the report of the CPT as an occasion to sensitize the involved offices with respect to the recommendation of the CPT, so that the recommendations can already be met in practice where possible. Moreover, amendment of the relevant legal provisions will be considered as part of a future revision.

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<sup>52</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=1985017.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1985017.pdf).

b. Safeguards during placement

**Paragraph 69:**

***The CPT recommends that the precepts set out in paragraph 69 concerning consent to treatment to be taken into account in the reform of the (mental) health legislation.***

The enclosures<sup>53</sup> of the Liechtenstein Foundation for Aid to the Sick and Senior Citizens indicate that the demands mentioned concerning consent to treatment have already been fully met in practice. Receipt of the doctor's certificate and the signature of the person concerned on the admission sheet constitute consent to treatment. In this regard, please refer to Enclosure 9 a to f.

The formal basis is currently found in the placement relationship under civil law. The Foundation mentioned above constitutes a service operation for nursing and care. It carries out all medical treatments on the order and on behalf of the general practitioners. All nursing activities are (if cognitively possible) discussed with the person concerned on a continuous basis and are recorded in the nursing documentation.

The Liechtenstein Foundation for Aid to the Sick and Senior Citizens is currently also working on the development of written nursing home agreements, in which the points mentioned are taken into account.

Inclusion of the principles set out in paragraph 69 will be considered as part of a future revision of the relevant legal provisions.

***The CPT requests detailed information on the progress made as regards the reform of the (mental) health legislation.***

The competent Liechtenstein authorities<sup>54</sup> will submit relevant documentation to the CPT as it becomes available.

## **5. Legal status of residents at St.Mamertus Nursing Home**

**Paragraph 70:**

***The CPT recommends that all cases of retention (Zurückbehaltung) of residents at St. Mamertus Nursing Home be notified to the court.***

The practice of retaining gerontopsychiatric patients at St. Mamertus Nursing Home without a court decision is known and has already been discussed with the competent offices.

In practice, the procedure for notifying the court is as follows: The round table mentioned in paragraph 71 is convened, and the outcome of this consultation is notified to the Chief Public Health Officer. The Chief Public Health Officer verifies the decision and reports it to the court. This procedure was introduced upon consultation with a competent judge at the time. It now appears in need of reform, however. In the coming year, the competent judge will be approached and a new procedure will be drafted together with the National Hospital and the nursing homes. Particular attention will be paid to the definition of responsibilities.

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<sup>53</sup> See Enclosure 9 a to f.

<sup>54</sup> Ministry of Public Health and subordinate offices.

**Paragraph 71:**

***The CPT invites the Liechtenstein authorities to explore the possibility of involving an outside authority (e.g. a judge) in the regular review of the placement of persons under guardianship at St. Mamertus Nursing Home and, if appropriate, in other establishments of this kind.***

At the outset, the distinction should be noted between guardianships, advisers, and trustees (see § 187 paras. 1 and 2 of the General Civil Code<sup>55</sup>), whereas the relevant legal provisions on trusteeships and advisers (§ 269 et seq. of the General Civil Code) already provide appropriate safeguards. Advisers and trustees are subject to the instruction and control of the court (§ 282 para. 3 of the General Civil Code). As part of its fiduciary duty, the court must in particular verify at regular intervals whether the well-being of the person in care or the status of the situation calls for rescission or modification of the advisership or trusteeship (§ 283 para. 3 of the General Civil Code).

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<sup>55</sup> [http://www.gesetze.li/get\\_pdf.jsp?PDF=1003001.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1003001.pdf).



**ANNEX:**

**New Liechtenstein laws in connection with the CPT visit, all of which enter into force on 1 January 2008:**

- Enclosure 1: Law of 20 September 2007 amending the Code of Criminal Procedure, LGBI. 2007 No. 292
- Enclosure 2: Law of 20 September 2007 amending the Juvenile Court Act, LGBI. 2007 No. 293
- Enclosure 3: Law of 20 September 2007 amending the Mutual Legal Assistance Act, LGBI. 2007 No. 294
- Enclosure 4: Law of 20 September 2007 amending the Enforcement of Sentences Act, LGBI. 2007 No. 295
- Enclosure 5: Law of 20 September 2007 amending the Code of Civil Procedure (StPO), LGBI. 2007 No. 296
- Enclosure 6: Law of 20 September 2007 amending the Law on Cooperation with the International Criminal Court and the other International Tribunals, LGBI. 2007 No. 297
- Enclosure 7: Law of 20 September 2007 amending the Complaints Commission Act, LGBI. 2007 No. 298

**Other enclosures:**

- Enclosure 8: Form of the National Prison concerning consent to disclosure of medical files (upon release)
- Enclosure 9: Documents and forms of the Liechtenstein Foundation for Aid to the Sick and Senior Citizens (LAK)
  - a) Form: Doctor's certificate
  - b) Concept for application of coercive measures
  - c) Form: Sociopsychiatric admission checklist
  - d) Form: Joint protocol on coercive measures
  - e) Letter template of the Chief Public Health Officer to the Court of Justice
  - f) Form: Emergency medical examination and decision