

CPT/Inf (2008) 20

**Report to the Government of  
the Principality of Liechtenstein  
on the visit to Liechtenstein  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)  
from 5 to 9 February 2007**

The Government of the Principality of Liechtenstein has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2008) 21.

Strasbourg, 3 July 2008

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

Ressort Justiz  
Regierungsgebäude  
FL - 9490 Vaduz

Strasbourg, 12 July 2007

Dear Madam/Sir

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of Liechtenstein drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Liechtenstein from 5 to 9 February 2007. The report was adopted by the CPT at its 63<sup>rd</sup> meeting, held from 2 to 6 July 2007.

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

The CPT would be grateful if it were possible, in the event of the response forwarded being in German, for it to be accompanied by an English or French translation. It would also be most helpful if the Liechtenstein authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully

Mauro Palma  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment

## **I. INTRODUCTION**

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

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Liechtenstein from 5 to 9 February 2007. The visit formed part of the CPT’s programme of periodic visits for 2007. It was the third visit to Liechtenstein to be carried out by the Committee<sup>1</sup>.

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

- Petros MICHAELIDES, Head of delegation
- Asya KHACHATRYAN
- Veronica PIMENOFF.

They were supported by the following members of the CPT’s Secretariat:

- Caterina BOLOGNESE
- Muriel ISELI

and assisted by:

- Claudia GROOETHAERT-NAIMER (interpreter)
- Christoph RENFER (interpreter).

### **B. Establishments visited**

3. The delegation visited the following places:

- Vaduz Prison, including the police detention facilities<sup>2</sup>
- Vaduz Hospital (psychiatric unit and secure room for detained persons)
- St. Mamertus Nursing Home, Triesen
- Border post, Schaanwald.

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<sup>1</sup> The two previous visits to Liechtenstein took place in April 1993 and May/June 1999. The CPT's reports on these visits and the responses of the Government have been published under the references CPT/Inf (95) 7 and CPT/Inf (95) 8 (1993 visit), and CPT/Inf (2002) 33 and CPT/Inf (2002) 34 (1999 visit).

<sup>2</sup> Establishment visited in 1993 and 1999.

### C. Consultations and co-operation

4. In the course of the visit, the delegation held consultations with Klaus TSCHÜTSCHER, Deputy Prime Minister and Minister of Justice, Martin MEYER, Minister of the Interior and Health, and Hugo QUADERER, Minister for Social Affairs. It also held fruitful discussions with senior officials of these ministries and with Thomas GSTÖHL, Head of the Asylum and Refugee Department of the Immigration and Passport Office.

A list of the national authorities and persons met by the delegation is set out in Appendix II to this report.

5. The co-operation received by the delegation from the Liechtenstein authorities during the visit was, on the whole, very good. In particular, the delegation was granted immediate access to all the establishments it sought to visit, and was able to talk in private with all the persons with whom it wished to speak. Further, both the government officials and the management and staff of the establishments visited were very helpful. In this respect, the CPT would like to express its appreciation for the assistance provided to its delegation by the liaison officer designated by the national authorities, Gert ZIMMERMANN.

6. That said, at Vaduz Prison (including the police detention facilities), the delegation's doctor was only authorised to consult medical files after the persons to whom they related had given their consent<sup>3</sup>. A mere seven people were detained in this establishment on the first day of the visit. Due to various constraints, it was not possible to contact formerly detained persons, in particular foreign nationals who were no longer in Liechtenstein. As a result, only a very limited number of medical files could be consulted.

In discussing this issue with the delegation, the Minister of the Interior and Health justified the denial of access to medical files on the basis of the medical secrecy provisions in the Law on Public Health (*Sanitätsgesetz*), on the one hand, and Liechtenstein's adherence to the European Union data protection directive<sup>4</sup>, on the other.

7. Under the terms of Article 8, paragraph 2 (d), of the Convention, a "Party shall provide the Committee with [...] other information available to the Party which is necessary for the Committee to carry out its task". Access for the members of a visiting delegation to the medical files of persons who are or have been deprived of their liberty is often essential for the Committee to carry out the task entrusted to it.

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<sup>3</sup> It should be emphasised that the delegation experienced no problem whatsoever in gaining access to the medical files it wished to consult at St. Mamertus Nursing Home.

<sup>4</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.

Such access can be necessary to verify, in a particular case, whether there is medical evidence indicative of ill-treatment, or to understand the medical history of the person concerned. Further, by virtue of its mandate (the prevention of ill-treatment), the Committee has to form an opinion on the organisation and functioning of the health-care service in the establishments visited. In order for it to be able to do this, it is important that visiting delegations have general access to all information of a medical nature.

8. It is true that Article 8, paragraph 2 (d), of the Convention adds that “[i]n seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics”. However, this provision simply lays down procedural rules to be respected by the Committee in gaining access to the information requested; it should not be used to justify a refusal to grant access to such information, nor should it be used to place conditions on access which would be tantamount to a refusal. When national law is a potential obstacle to the effective transmission of information necessary for the Committee to carry out its task, it is for the Government concerned to ensure that it nevertheless honours its commitments under the Convention.

As regards the above-mentioned European Union data protection directive, the CPT notes that it contains provisions (e.g. Articles 7 and 8) which contemplate the possibility of making the processing of data – including of a medical nature – legitimate. In the Committee’s view, therefore, the directive is not inconsistent with its visiting delegations being granted access to medical files.

9. According to the Explanatory Report to the Convention, it is envisaged that possible difficulties in obtaining access to information under Article 8, paragraph 2 (d), “will be resolved in the spirit of mutual understanding and co-operation upon which the Convention is founded”. The Committee is convinced that if the issue of access to medical files is approached in this spirit, it will be possible for practical and reasonable solutions to be found, to the satisfaction of all parties involved.

**The CPT requests the Liechtenstein authorities to review the question of access to medical files for CPT visiting delegations in the light of the above remarks.**

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

### A. Police custody

#### 1. Preliminary remarks

10. The basic rules concerning police custody, summarised in the reports on the visits carried out in 1993 and 1999, remained unchanged at the time of the 2007 visit. It is recalled that whenever a person is suspected of a criminal offence and arrested by the police on the basis of a warrant issued by an investigating judge, the latter must hear (*vernehmen*) the person concerned within 24 hours – or, “when that is not possible”, within three days. When a person is apprehended by the police without such a warrant, the investigating judge must be seized of the case within 48 hours (*übergeben*) and must then hear the person within 24 hours – or, “when that is not possible”, within three days<sup>5</sup>.

11. Several legislative reforms were underway at the time of the visit. In particular, consultations concerning the reform of the legal framework of pre-trial detention – with amendments, inter alia, to the Code of Criminal Procedure, the Law on Juvenile Justice (*Jugendgerichtsgesetz*) and the Law on Legal Assistance – had been completed, and debates were planned before Parliament in Spring 2007.

Under the terms of (proposed) Sections 127 to 130 of the Code of Criminal Procedure, when a person is deprived of his or her liberty (with or without a warrant), an investigating judge will have to be seized of the case “immediately” or “without undue delay”, depending on the circumstances, but no later than 48 hours after the apprehension (*Festnahme*). The judge must then hear the person concerned within 48 hours. As a result, the person concerned will have to appear before a judge no later than 96 hours after having been deprived of his or her liberty.

Other provisions proposed in the context of this reform will be examined below.

**The CPT would like to be informed of the progress made regarding the above-mentioned legislative reforms.**

12. Persons may also be deprived of their liberty for other reasons, such as to verify their identity (for an unspecified duration)<sup>6</sup>; when they are a danger to themselves or to others, or when the interests of public morals, safety, health or order so require (for no longer than until the end of the following day)<sup>7</sup>; or for sobering-up purposes<sup>8</sup>.

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<sup>5</sup> Sections 127 to 130 of the Code of Criminal Procedure. A duty roster system has been established so that hearings by the investigating judge can take place every day, including Saturdays and Sundays.

<sup>6</sup> Section 24 of the Police Act of 21 June 1989.

<sup>7</sup> Section 133, paragraphs 1 and 2, of the Law on Administrative Organisation of 21 April 1922 and Section 83, paragraph 1 (a), of the Ordinance on Police Organisation and Service of 22 August 2000.

<sup>8</sup> Section 133, paragraph 3, of the Law on Administrative Organisation.



13. Foreign nationals may be placed in detention in order to guarantee the proper completion of proceedings concerning their stay in the country or the execution of a removal order. As a rule, foreign nationals are initially placed in a police cell (the multi-occupancy cell, see paragraph 26), and subsequently, if necessary, in a prison cell.

The delegation was informed that, by virtue of the legal provisions in force at the time of the visit<sup>9</sup>, placement in detention had to be examined within 96 hours by a judicial authority; the latter could then order detention for a period of three months, which could be extended by six months (totalling a maximum of nine months). A review of these provisions was in progress, however. **The CPT would like to be informed, as appropriate, of any changes made to the legislation applicable in this field.**

## **2. Ill-treatment**

14. No-one was being held in the police cells located within Vaduz Prison at the time of the visit. The delegation nevertheless talked to prisoners about their apprehension and police custody. As was the case during the CPT's previous two visits, the delegation heard no allegations – and gathered no other evidence – of ill-treatment during police custody and questioning. However, some allegations were received of excessive use of force, tight-fitting handcuffs and verbal abuse at the time of apprehension. In at least one case, the apprehended person's head was allegedly covered with a cloth bag, for the duration of his apprehension and transfer in custody.

15. The CPT recognises that the apprehension of a suspect can be a difficult and dangerous task, in particular when the person resists or the police have good reason to believe that the person is an imminent threat. Law enforcement officials may on occasion have to use force in order to effect an apprehension. However, the force used should be no more than is reasonably necessary, and once the person has been brought under control, there can be no justification for him or her being struck. Similarly, there can be no justification for covering the heads of apprehended persons with a bag or by other means; this practice should be abandoned. **The CPT recommends that the authorities of Liechtenstein take the necessary steps to ensure that these precepts are respected.**

Further, **the Committee 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.**

16. The diligent examination by the competent authorities of all complaints of ill-treatment brought to their attention and, where necessary, the imposition of appropriate disciplinary or criminal penalties, are essential elements of any strategy aimed at preventing ill-treatment by the police. If a complaints system is to win the confidence of the public, investigations must be carried out diligently, swiftly and efficiently, and by a body independent from the police.

**The CPT would like to receive detailed information regarding the procedures in force for examining complaints of police ill-treatment.**

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<sup>9</sup> i.e. certain provisions of the Swiss Federal Law on Aliens, by virtue in particular of the Agreement between Switzerland and the Principality of Liechtenstein on the regulations applicable in immigration matters concluded on 6 November 1963 and of the official notice (*Kundmachung*) of 6 June 2006.

Further, the Committee would like to receive 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.

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

17. Since its first visit to Liechtenstein, in 1993, the CPT has constantly emphasised the importance it attaches to three rights for persons deprived of their liberty by the police, namely the right of the persons concerned to inform a relative or a third party of their choice of their situation, the right of access to a lawyer and the right of access to a doctor.

The CPT considers that these rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty. They should be enjoyed by all categories of persons deprived of their liberty (including those placed in administrative detention or held under aliens legislation) and should apply from the very outset of their deprivation of liberty. Furthermore, persons deprived of their liberty by the police must be expressly informed, without delay and in a language they understand, of all their rights.

Finally, the fact that a person has been deprived of his or her liberty by the police, whatever the reason, must be officially recorded without delay.

18. The 2007 visit brought to light that, despite some recent developments – such as the issuance of an internal police instruction – most of the recommendations made by the CPT over the years had still not been implemented. The Committee is very concerned to note that some of its recommendations, in particular regarding the right of access to a lawyer, have apparently not been taken into account even in the current legislative reforms.

19. The right to inform a relative or a third party of one's choice of one's situation was still not guaranteed from the very outset of deprivation of liberty. In pursuance of paragraph 11.1 of internal police instruction No. 2003-011 of 16 September 2003 (as amended on 16 January 2007; hereinafter referred to as the “Police Instruction”), persons deprived of their liberty were only informed during their first questioning by the police of their right to have a relative notified.

The CPT noted that, in the framework of the ongoing legislative reform relating to pre-trial detention, it was planned to introduce a new provision into the Code of Criminal Procedure (Section 128a), 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 [...]”. The CPT welcomes this development and **trusts that this provision will be adopted without delay.**

Further, the Committee 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.).

20. As at the time of the 1993 and 1999 visits, the right of access to a lawyer was not guaranteed from the outset of deprivation of liberty, but only once the persons deprived of their liberty acquired the status of being formally accused (*beschuldigt* ; Section 24, paragraph 1, of the Code of Criminal Procedure), which in practice meant, in most cases, after the first questioning by the judge. According to paragraph 11.1 of the Police Instruction, persons deprived of their liberty were to be informed during their first questioning by the police of their right to have a lawyer notified.

The CPT is particularly concerned by the fact that the draft amendments to the relevant provisions of the Code of Criminal Procedure are not in line with the long-standing recommendations made by the Committee in this regard<sup>10</sup>. It is also noteworthy that the draft amendments to Section 30, paragraph 3, of the Code of Criminal Procedure still provide for the possibility of supervising conversations between a detained person and his lawyer (for up to one month).

The CPT wishes to recall that, in its experience, it is during the period immediately following the deprivation of liberty that the risk of intimidation and physical ill-treatment is at its greatest. Consequently, it is fundamental that the right of access to a lawyer be guaranteed from the very outset of deprivation of liberty (and also applied, in principle, during any questioning by the police).

The Committee recognises that, in order to protect the legitimate interests of the police investigation, it may exceptionally prove necessary to delay for a certain period the access of a detained person to the lawyer of his or her choice. Nevertheless this should not lead to a denial of the right of access to a lawyer during the period in question or to restrictions on the right to talk to a lawyer in private; in such a case, access to another, independent, lawyer should be arranged.

**The CPT 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 above remarks.**

21. Section 7a, paragraph 3 (b), of the Law on Public Health guaranteed to any detained person the right of access to a doctor, including a doctor of his or her choice. The information gathered during the visit suggests that the implementation of this provision did not pose any problems.

The Law on Public Health was, however, being completely revised at the time of the 2007 visit. If new provisions relating to the right of persons in police custody to have access to a doctor were to be adopted, **the CPT would like to be informed of their content.**

22. The 2007 visit revealed that, despite a specific recommendation made by the Committee in 1993 and reiterated in 1999, persons deprived of their liberty by the police were still not provided with a leaflet informing them of all their rights. Such a state of affairs is not acceptable.

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<sup>10</sup> Although draft Section 128a of the Code of Criminal Procedure lays down an obligation to inform any apprehended person, at the time of the apprehension or immediately thereafter, of his right to notify a lawyer, it remains the case that the right to actual assistance by a lawyer becomes effective once a person acquires the ~~status of~~ *status of* *defendant*.

The CPT 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.

23. The delegation was informed that, when a juvenile is taken into custody, his or her legal representative is immediately notified by the police, as required by paragraph 11.1 of the Police Instruction.

However, according to Section 21a of the Law on Juvenile Justice, a person of trust is present during the questioning of a juvenile by the police (or a judge) only if the juvenile so requests (*auf Verlangen des Jugendlichen*) and if that request does not have the effect of prolonging custody disproportionately<sup>11</sup>.

The CPT must stress that the point of special provisions for juveniles is to provide persons belonging to this age group with adequate protection and with adult support so that they do not have to make on their own decisions with important legal implications. If the onus is placed on the juvenile to request the presence of a trusted person, this defeats the object; such a presence should be obligatory and unconditional. **The Committee recommends that, in the framework of the current legislative reforms, the Law on Juvenile Justice be amended with a view to ensuring compliance with these precepts.**

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

24. The custody register appeared, on the whole, to be well kept (in electronic form and on paper). However, only the day – and not the time – of release or transfer was usually recorded. **Steps should be taken to remedy this shortcoming.**

25. Liechtenstein has concluded a number of agreements with Switzerland and Austria on the setting-up of offices to control border crossings ("border posts").

At the Schaanwald border post, the delegation was informed that the buildings were located on Liechtenstein territory and were the property of the Principality of Liechtenstein, but were staffed by Swiss officials, answerable to Swiss authorities.

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<sup>11</sup> Section 21a of the Law on Juvenile Justice also lays down that the juvenile concerned must be informed of his right to request the presence of a person of trust immediately following the apprehension.

This border post contained one cell, which, as the delegation was informed, had not been used for several years and was due to be taken out of service during 2007. It also comprised a room used for searching and “guarding” persons subject to controls. It transpired from interviews conducted with inmates and from documents consulted at Vaduz Prison, that persons could be deprived of their liberty in this room for several hours. One of the inmates met at Vaduz Prison alleged that he had spent several hours in this room, handcuffed, without receiving any information about his rights.

**The CPT would like to receive information concerning the measures taken by the Liechtenstein authorities, in the context of the agreements concluded 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.**

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

26. It is recalled that two cells located on the premises of Vaduz Prison were being used for police custody: one multi-occupancy cell, and one observation cell where inebriated persons or persons who needed to be kept under surveillance<sup>12</sup> might be held temporarily (for example, if they were agitated or presented a suicide risk). Material conditions were good in both cells.

Following the recommendations made by the Committee after the 1993 and 1999 visits, the official capacity of the multi-occupancy cell, measuring some 28 m<sup>2</sup>, had been reduced from fifteen to nine places. The delegation was informed that, in practice, the number of persons held at a time in this cell had never reached the official capacity. **If, exceptionally, the official capacity of the multi-occupancy cell were to be reached in future, additional accommodation should be made available.**

The observation cell had been equipped with running water, as suggested by the CPT in the report on the 1999 visit. In addition, persons placed in that cell had access, on request, to a shower located in a separate room. The Committee welcomes these developments.

As regards the modalities of placing detained persons in the observation cell, reference is made to the remarks and recommendations in paragraphs 46 and 47.

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<sup>12</sup> Including persons detained in the prison: remand or sentenced prisoners and immigration detainees.

## **B. Vaduz Prison**

### **1. Preliminary remarks**

27. The CPT's delegation carried out a follow-up visit to Vaduz Prison. It also visited, for the first time, Vaduz Hospital, in order to examine the conditions under which detained persons may be held there.

28. Since the 1999 visit, legislation on matters relating to imprisonment has undergone a number of changes. In particular, a new prison ordinance came into force in 2004<sup>13</sup>. Furthermore, the delegation was informed that the Law on the Execution of Sentences was undergoing revision, and the draft of the new law was scheduled for debate in Parliament in the Spring of 2007. **The CPT would like to be informed of the progress made in this regard, and receive a copy of the new Law on the Execution of Sentences once it is adopted.**

29. The detention of foreign nationals held under aliens legislation is not governed by a special legal framework. Thus, immigration detainees are subject to the rules applicable to remand and sentenced prisoners. Such a state of affairs is not satisfactory. **It would be desirable that the situation of immigration detainees be governed by specific rules, reflecting their particular status.**

30. The description of Vaduz Prison given in the report on the 1993 visit remains, on the whole, valid<sup>14</sup>. That said, the establishment's official capacity has been reduced from 24 to 22 places. It is recalled that Vaduz Prison is the country's sole establishment for holding remand prisoners, convicts (serving terms of a maximum of two years<sup>15</sup>), as well as foreign nationals detained under aliens legislation.

On the first day of the visit, the prison was accommodating five male sentenced prisoners and two female inmates (one on remand and one in administrative detention). The longest stay was around 2½ years. No immigration detainees were being held.

31. From the outset, it should be emphasised that the delegation received no allegations – nor any other indications – of ill-treatment by prison staff. On the contrary, the atmosphere seemed to be relaxed, and several prisoners stated that their relations with staff were good.

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<sup>13</sup> In addition, a law on probation came into force in 2000, and various legal texts have been modified in order to introduce the possibility of recourse to non-custodial sanctions (see, for example, Sections 22a to 22m of the Code of Criminal Procedure).

<sup>14</sup> CPT/Inf (95) 7, paragraphs 36 and 37. The delegation was informed that a plan to extend the prison building (and to build a refugee centre on an adjacent site) had been rejected by referendum.

<sup>15</sup> In principle, persons sentenced to more than two years' imprisonment serve their term in an establishment in Austria under an agreement concluded between Liechtenstein and Austria on 4 June 1982.

During the visit, the delegation was informed that disciplinary proceedings against a prison officer had been initiated in 2001, for inappropriate behaviour towards a prisoner (in particular verbal pressure). These proceedings had resulted not only in the immediate suspension of the officer concerned, but also in his temporary transfer to another public service (for a two-year period). The CPT welcomes the vigilant and resolute attitude adopted by the authorities in this matter.

## 2. Conditions of detention

32. Material conditions of detention were once again found to be excellent and do not call for any particular comments.

33. As regards the regime, the CPT welcomes the fact that prisoners had access, in principle for seven to eight hours a day, to two communal rooms (a library and a games/sports room), and that the management had acquired two computers as well as additional books (including in foreign languages) and fitness equipment<sup>16</sup>. However, at the time of the visit, only two prisoners had work<sup>17</sup>, and no educational activities were offered to inmates. In the CPT's view, this situation may be considered generally adequate for short-term detention, but it is not satisfactory if prisoners are held in the establishment for prolonged periods<sup>18</sup>.

34. Further, it emerged from information gathered during the visit that the amount of time spent outside cells could be considerably reduced when inmates had to be separated from one another (either because they were in different categories or for other reasons, such as the risk of collusion). For instance, one prisoner with whom the delegation spoke said that she had to remain locked in her cell when female immigration detainees were being held in the women's unit (which comprised two cells, an entrance/common room, a kitchenette and a shower room).

35. Clearly, it is not easy to provide an appropriate regime for all inmates in a small establishment intended to accommodate different categories of detainees, usually for short periods of time. However, in the CPT's view, it is not acceptable to leave prisoners to their own devices for months on end. The aim should be to ensure that all inmates are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of various kinds: work, study, sport and leisure activities.

In this context, the CPT welcomes the wide range of activities referred to in the draft Law on the Execution of Sentences. Adoption of this text will certainly constitute an important first step towards fulfilling the aforementioned objective.

**The Committee 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.**

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<sup>16</sup> Inmates could in principle spend seven to eight hours a day outside their cell; in the female wing, the cell doors were open from 7.15 a.m. to 6.15 p.m.

<sup>17</sup> One was working daily (cleaning, distributing meals, sorting laundry), while the other was working at fairly regular intervals (making siphons, for approximately one week in every six).

<sup>18</sup> At the time of the visit, four inmates had been held for more than 17 months.

36. As regards outdoor exercise, the establishment had a fairly large yard which was equipped for various games; however, access to it was reserved to male inmates. Female inmates only had access to an area of limited size, and lacking any equipment, located on the prison roof. **The CPT invites the authorities to reconsider the question of the use of the exercise yard, and particularly the possibility of access to it for female inmates.**

### **3. Health care**

37. From the outset, the CPT wishes to emphasise that, because it proved impossible for the delegation to obtain general access to the medical files of inmates held in Vaduz Prison (see paragraph 6), it was unable to conduct a full evaluation of the establishment's health-care service.

38. Inmates could consult the prison doctor or their own doctor (and dentist). Further, the systems set up for specialist consultations outside the prison and for dealing with emergencies seemed to be working satisfactorily.

However, notwithstanding the recommendations made by the Committee in the reports on its 1993 and 1999 visits, there was still no provision for a regular visit to the prison by nursing staff. The CPT recalls that such staff could be entrusted with various tasks for which appropriate medical training is required, some of which had been assigned to custodial staff (see paragraph 39)<sup>19</sup>.

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

39. The distribution of medicines to the inmates was undertaken by prison officers, who were assisted in this task by a prisoner. Such a practice is not acceptable. In the CPT's view, prisoners should not be involved in the performance of health-care duties necessitating specialised training, and should in no circumstances distribute medicines. **The Committee recommends that the involvement of prisoners in the distribution of medicines at Vaduz Prison be immediately brought to an end.**

40. In its report on the 1999 visit, the CPT had recommended that all persons admitted to Vaduz Prison be examined by a doctor, or by a qualified nurse reporting to a doctor, within 24 hours of their admission to the establishment.

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<sup>19</sup> In this connection, the CPT wishes to clarify that its recommendation was not aiming at obliging a nurse to pay a daily visit to each detainee (as the recommendation seems to have been understood by the Liechtenstein authorities, see CPT/Inf (2002) 34, page 9).



As the delegation had only very limited access to the medical files, it was not possible, during the visit, to verify whether the above-mentioned recommendation had been implemented. After the visit, the authorities transmitted to the Committee statistics of all admissions to the establishment in 2005 and 2006, indicating, *inter alia*, the dates of admission and release, as well as of the first medical examination of the persons concerned. The statistics showed that, in a number of cases, the medical examination had been carried out more than 48 hours after admission, or, in some cases, had not been carried out at all, even though the detention had lasted for several days. The authorities explained that most of the persons who had not been examined by a doctor were foreign nationals unlawfully present in the country who had not reported any medical problems on admission, and whose removal from the country was imminent. In the CPT's opinion, this explanation is not a valid justification for failing to have a medical examination carried out. Prompt medical screening of all new arrivals is essential, particularly to prevent the spread of transmissible diseases and suicides, and to enable the recording of any injuries in good time.

As regards immigration detainees, the delegation was informed that, thus far, no foreign nationals had been re-admitted to Vaduz Prison following a failed deportation attempt. If such a situation did occur in the future, the foreign national concerned should always be medically examined upon re-admission.

**The CPT reiterates its recommendation that the Liechtenstein authorities take the necessary measures 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.**

41. The conditions in which prisoners were hospitalised at Vaduz Hospital were very good. An ordinary individual room, of adequate size, very bright and well equipped (including with a call system), could be rendered secure through the addition of certain discreet security arrangements, according to the level of danger presented by the prisoner (an infrared alarm and one or two bars on the window). In addition, hospitalised prisoners benefited from the hospital's full range of services.

However, the delegation was told that whenever a member of the medical or nursing staff went into this room, he or she was accompanied by at least one police officer, who remained in the room throughout the consultation.

The CPT recognises that special security measures may be required during medical examinations in specific cases. There can be no justification, however, for police officers being *systematically* present during such examinations. Other solutions can and must be found in order to reconcile, on the one hand, legitimate security needs with, on the other hand, the principle of medical confidentiality and the establishment of a genuine doctor-patient relationship. One possibility might be for doctors to carry an alarm device, by which the police would be alerted in exceptional cases in which a prisoner became agitated or threatening during a medical examination; another might be to hold consultations in the presence of an additional health-care staff member.

**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.**

#### 4. Other issues

42. At the time of the visit, the custodial staff consisted of four<sup>20</sup> prison officers (public officials) and six auxiliary staff (contracted security officers). There were no female prison officers; however, a woman had recently been appointed governor of the prison. The presence in the establishment of (at least) one member of staff was guaranteed around the clock, seven days a week<sup>21</sup>.

**The CPT would like to receive detailed information regarding the status and training of the auxiliary staff (security officers) employed at the prison.**

43. The CPT recalls that it is very important for prisoners to be able to maintain good contact with the outside world. Above all, they must be given the opportunity to maintain their relationships with their family and friends, and especially with their spouse or partner and children. Granting of contacts with the outside world should therefore be the norm, their refusal the exception. Any restrictions on such contacts should be based exclusively on security reasons of an appreciable nature.

These principles should also apply to the visits, telephone calls and correspondence of remand prisoners. The Committee recognises that on occasion it may be necessary, in the interests of an investigation, to impose restrictions on contacts with the outside world for particular prisoners. Such restrictions should, however, be strictly limited to the requirements of a given case, and applied for as short a time as possible.

44. The CPT welcomes the fact that *sentenced prisoners* were granted two one-hour visits per week<sup>22</sup>.

The situation was less favourable as regards access to the telephone. In application of Section 37 of the Prison Ordinance, under which “phone calls [...] need authorisation”, the prison management authorised one weekly telephone call only if the prisoner concerned had not received any visits during the same week, or if it was justified by particular circumstances (such as sickness, accident or death of a member of the family). In the CPT's view, it is not appropriate to require prisoners to request authorisation for every phone call and to oblige them to choose between a visit and a phone call each week. In this connection it is a matter of concern that the draft Law on the Execution of Sentences would continue to unduly restrict access of sentenced prisoners to the telephone<sup>23</sup>. Such a state of affairs is not in conformity with current standards, and more particularly the recently revised European Prison Rules<sup>24</sup>. **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.**

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<sup>20</sup> Five with effect from mid-February 2007.

<sup>21</sup> Prison staff worked between 7 a.m. and 7 p.m.; an auxiliary was present at night.

<sup>22</sup> In accordance with Section 34 of the Prison Ordinance, prisoners are entitled to two 30-minute visits per week; each visit can be extended to 60 minutes if it is possible to organise it.

<sup>23</sup> See in particular draft Section 88, which states that “when there are reasons deserving to be taken into account, sentenced prisoners must be enabled to make phone calls [...]” (*Aus berücksichtigungswürdigen Gründen sind Strafgefangenen Telefongespräche [...] zu ermöglichen*). The commentary on this provision specifies that a reason deserves to be taken into account when it is in conformity with the aims of detention and when the prisoner cannot be expected to have contact in another form (such as a visit or correspondence).

<sup>24</sup> See in particular Rule 24 (contact with the outside world) and the commentary thereto.

For *remand prisoners*, visits (a minimum of 15 minutes twice a week) and phone calls required authorisation by the investigating judge<sup>25</sup>. In this respect, the CPT noted that, in the framework of the legislative reforms under way, it was planned to increase the visit entitlement (to a minimum of 30 minutes twice a week), and to recognise the right of remand prisoners to have access to the telephone by making express provision for this right in the Code of Criminal Procedure<sup>26</sup>. The CPT welcomes these developments and **trusts that these provisions will be adopted.**

45. Despite a specific recommendation made by the Committee in the report on its 1999 visit, the use of the observation cell (see paragraph 26) was not recorded in a special register (containing in particular the following information: reason for placement; name of person who ordered/effectuated the placement; etc.). **The CPT reiterates its recommendation that such a register be established.**

46. The delegation was informed by staff that persons placed in the observation cell (including persons in a state of agitation) were sometimes cuffed (by the wrists and/or ankles). Apparently, this was rarely the case – no use had been made of ankle cuffs for the previous two years. The procedure for placement in this cell was governed by the Police Instruction. In particular, the video monitoring system had to be activated, and when force was used, the prison doctor had to be informed immediately. As the use of means of restraint was not being recorded in a special register, the delegation was unable to assess the situation. Furthermore, due to the limited access to medical files, it was impossible to verify compliance with the formal requirement that a doctor be immediately informed.

47. The CPT understands that it may, on very exceptional occasions, be necessary to resort to means of restraint in addition to placement in an observation cell in a prison performing such varied functions as does Vaduz Prison. However, in view of the risks run by the prisoners concerned, the following principles should be applied:

- means of restraint should be used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to contain those risks in a satisfactory manner; they should never be used as a punishment or to compensate for shortages of trained staff;
- any use of means of restraint should be immediately brought to the attention of a doctor;
- means of restraint should not be used in prison when hospitalisation would be a more appropriate intervention;
- staff should be trained in the use of means of restraint;
- the period for which means of restraint are applied should be as short as possible (usually minutes or a few hours);
- a special register should be kept to record all cases in which recourse is had to means of restraint; the entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by the person or staff.

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<sup>25</sup> Sections 34 and 37 of the Prison Ordinance and Section 135, paragraph 3, of the Code of Criminal Procedure.

<sup>26</sup> Draft Section 137.

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

48. The CPT welcomes the positive developments relating to inspections which have occurred in practice since the 1999 visit. Information gathered by the delegation in fact shows that the establishment was inspected once a month by the President of the Court of first instance<sup>27</sup>, who spoke in private with the inmates and advised the Government of any problems observed or reported by inmates.

The CPT took note that, in the context of the legislative reforms under way, it is planned to set up a commission, appointed by the Government, to be responsible (instead of the President of the Court of first instance) for inspecting the prison once a year (at least) without prior notice<sup>28</sup>. **Express mention should be made in the law of the entitlement of commission members to speak in private to detained persons during their visits. Further, the Committee trusts that the commission, like the President of the Court of first instance, will prove to be a frequent visitor to the establishment.**

49. As regards the information provided to prisoners, the delegation noted that a leaflet containing some basic information on the house rules (daily routine, access to showers, outdoor exercise and visits) was available in several languages. Once the new Law on the Execution of Sentences has come into force and the prison rules have been updated, **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.).**

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<sup>27</sup> Section 137 of the Code of Criminal Procedure.

<sup>28</sup> Section 17 of the draft Law on the Execution of Sentences.

### C. Involuntary forensic placement

50. Persons who have committed a criminal offence under the influence of a mental disorder may be placed by court order as a preventive measure in an institution for mentally disturbed offenders<sup>29</sup> (*Anstalt für geistig abnorme Rechtsbrecher*). Under certain circumstances, such a measure may also be imposed in cases where the person concerned has not been declared criminally irresponsible<sup>30</sup>. Similarly, involuntary placement in a specialised institution may be ordered in respect of persons who have committed a criminal offence under the influence of intoxicating or narcotic substances<sup>31</sup>, or in respect of persons who are considered to be at risk of re-offending<sup>32</sup>.

In the absence of an appropriate establishment on the territory of Liechtenstein, all preventive measures referred to above are usually implemented in Austrian establishments, in accordance with a bilateral treaty concluded with Austria in 1982.<sup>33</sup> At the time of the visit, one person was being held in a specialised institution in Austria, under Section 21 of the Penal Code.

51. In the CPT's view, involuntary forensic placements should always be surrounded by appropriate safeguards. In particular, the initial placement decision must offer guarantees of independence as well as of medical expertise.

The procedure for the placement of persons under Sections 21 to 23 of the Penal Code is set out in Sections 340 to 352 of the Code of Criminal Procedure. In particular, placement decisions are taken by a court, the person concerned must be assisted by a lawyer throughout the proceedings, and the court decision must be based on the opinion of at least one doctor with professional qualifications in psychiatry<sup>34</sup>.

In the case referred to above, the placement procedure was carried out in compliance with the legal requirements. However, the delegation noted that the court decision was based on the opinion of the same psychiatrist who had supported the suspect's initial provisional placement, pending the court's decision on the preventive measure. **In such cases, it would be desirable for the court to request a medical report from a second doctor with professional qualifications in psychiatry.**

52. Further, involuntary forensic placements should cease as soon as they are no longer required. For this reason, the need for such placements should be subject to regular review.

Placements under Section 21 of the Penal Code are for an indeterminate period ("for as long as their purpose requires it"), while placements under Sections 22 and 23 may not exceed maximum periods of two and ten years respectively.

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<sup>29</sup> Section 21, paragraph 1, of the Penal Code.

<sup>30</sup> Section 21, paragraph 2, of the Penal Code.

<sup>31</sup> Section 22 of the Penal Code.

<sup>32</sup> Section 23 of the Penal Code.

<sup>33</sup> See footnote 15.

<sup>34</sup> Sections 340, paragraph 2, and 349, paragraphs 2 and 3, of the Code of Criminal Procedure.

The Penal Code stipulates that all involuntary forensic placements have to be reviewed by the court at one-year or six-month intervals<sup>35</sup>. Pursuant to the above-mentioned co-operation treaty between Liechtenstein and Austria<sup>36</sup>, the general competence in enforcement of preventive measures lies with the Austrian courts, applying Austrian law, while Liechtenstein authorities remain competent to decide on certain matters, such as the termination of the measure.

The examination of the file of the case referred to in paragraph 50 revealed that no judicial review had apparently been carried out since the initial placement decision in October 2004. **The CPT would like to receive the Liechtenstein authorities' comments on this matter.**

More generally, **the Committee 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).**

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<sup>35</sup> According to Section 25 of the Penal Code, preventive measures under Sections 21 and 23 must be reviewed by the court at least once a year and those under Section 22 at least once every six months.

<sup>36</sup> Articles 5 and 6.

## **D. Involuntary civil placement**

### **1. Preliminary remarks**

53. For the first time, the delegation visited psychiatric/social welfare institutions in Liechtenstein, namely the Psychiatric Unit at Vaduz Hospital and St. Mamertus Nursing Home. In this context, particular attention was paid to involuntary placement procedures.

Involuntary placement in both types of establishment is governed by the relevant provisions of the Law on Social Welfare<sup>37</sup>. According to Section 11, paragraph 11, of the Law, persons who are mentally ill or disabled, or who suffer from substance dependence or are severely neglected (*verwahrlost*), may be placed against their will in an appropriate care institution. At the time of the visit, neither establishment was accommodating patients/residents on the basis of that provision. In practice, involuntary psychiatric patients are usually admitted to psychiatric hospitals in Switzerland, on the basis of bilateral agreements (see paragraph 67).

54. It should be emphasised at the outset that no allegations were heard – and no other evidence was obtained – of ill-treatment of residents by staff at St. Mamertus Nursing Home<sup>38</sup>. Indeed the atmosphere was positive and the staff appeared to be dedicated and attentive.

### **2. Psychiatric Unit at Vaduz Hospital**

55. The Psychiatric Unit at Vaduz Hospital is an open unit. It could admit patients on an involuntary basis, but did so only very rarely, and only for very brief periods, pending the patient's transfer to an appropriate establishment in Switzerland<sup>39</sup>.

56. Living conditions and the provision of health care appeared to be of a high standard and do not call for any particular comments. No means of mechanical restraint were used at the unit.

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<sup>37</sup> Sections 11 to 13.

<sup>38</sup> No in-patients were being held in the Psychiatric Unit at Vaduz Hospital at the time of the visit.

<sup>39</sup> In this connection, the delegation noted the intensive, individualised work carried out by the Mobile Socio-psychiatric Team (MST), a private enterprise entrusted by the Office for Social Services with the socio-psychiatric follow-up of every person who is the subject of an involuntary placement. The MST visits the patient in the foreign or local establishment, participates in the regular case-management of the person and prepares the phases of discharge and after-care.

### 3. St. Mamertus Nursing Home

57. At St. Mamertus Nursing Home, residents were accommodated in three units: a closed unit for patients suffering from dementia, an open unit for elderly persons, and an open unit for long-term sociopsychiatric patients. For practical reasons, residents were not strictly separated according to diagnosis into the categories of the three units. The delegation focussed its attention on patients suffering from dementia and psychiatric patients (it did not visit the unit for elderly persons). With an official capacity of 56 places, St. Mamertus was accommodating 57 residents at the time of the visit.

58. Living conditions were excellent throughout the two units visited. All residents had spacious, individual rooms, with large windows and a balcony. The en-suite toilets or shared washroom facilities available were in a very good state of repair and hygiene.

59. The delegation also gained a favourable impression of the treatment provided, which was based on an individualised approach. Many residents availed themselves of the option to receive care from a doctor or psychiatrist of their own choice, external to the establishment.

60. A good variety of activities was offered to all residents who were willing and able to participate in them. These included art therapy, furniture renovation (a metal and wood workshop was available), fitness training, gymnastics for the elderly and activity therapy (such as cooking, baking or social gatherings). Further, remunerated work was offered to 12 to 15 residents.

61. The establishment also had a clearly defined and successfully implemented policy, whereby resort to restrictive measures was reduced to a minimum and mechanical restraints were never to be used.

62. Staffing levels appeared to be somewhat stretched, considering that up to 80% of residents needed some level of assistance in order to eat or to perform other basic functions. Although an equivalent of 0.45 care staff was employed per bed, the night-duty shift between 8 p.m. and 7 a.m. consisted of only two staff members (one qualified psychiatric nurse and one auxiliary care staff member). **The CPT recommends that staffing levels at St. Mamertus Nursing Home be kept under review.**



#### 4. Safeguards

63. On account of their vulnerability, the mentally ill and mentally disabled warrant particular attention in order to prevent any form of conduct – or avoid any omission – contrary to their well-being. It follows that involuntary placement in a psychiatric/social welfare establishment should always be surrounded by appropriate safeguards.

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

64. The procedure by which involuntary placement in a psychiatric/social welfare establishment is decided should offer guarantees of independence and impartiality as well as of objective psychiatric expertise. Further, such placement should cease as soon as it is no longer required by the patient's/resident's mental state. Consequently, the need for placement should be reviewed by an appropriate authority at regular intervals. In addition, the patient/resident himself/herself should be able to request at reasonable intervals that the necessity for placement be considered by a judicial authority.

65. According to the relevant provisions of the Law on Social Welfare, the National Physician (*Landesphysikus*), the Office for Social Services or the Welfare Commission of the relevant municipality may apply to the court of first instance (*Landgericht*), which may order an involuntary placement for a maximum period of one year<sup>40</sup>. The court must hear the person concerned and, if necessary, appoint a legal adviser (*Rechtsbeistand*) to assist him or her<sup>41</sup>. For involuntary placement due to mental illness, mental disability or substance dependence, an expert opinion must also be sought<sup>42</sup>.

The placement decision must be brought to the attention of the person concerned, his or her next-of-kin, the Government, the National Physician, the Office for Social Services and the Welfare Commission of the relevant municipality<sup>43</sup>. An appeal against a decision on the initial placement or against its renewal may be lodged by the person concerned, his or her next-of-kin or the legal representative to the Appellate Court ( )<sup>44</sup>.

In cases of imminent danger (*Gefahr im Verzug*), the National Physician, his deputy or the physician on duty must order the immediate placement of the person and notify the court of first instance, which must then approve or reject the placement within five days<sup>45</sup>. If the emergency placement is approved, the court proceedings will continue on the basis of the above-mentioned rules for ordinary placement procedures.

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<sup>40</sup> Section 12, paragraphs 1 and 3, of the Law on Social Welfare.

<sup>41</sup> Section 13, paragraph 2, of the Law on Social Welfare. *Rechtsbeistand* - i.e. a Law-school graduate working for a period of six months with the court, as part of the initial practical training. The delegation was informed that the judge appoints such a legal adviser whenever it is apparent that the person cannot speak for himself or herself.

<sup>42</sup> Section 13, paragraph 1, of the Law on Social Welfare and Section 133, paragraph 5, of the Law on Administrative Organisation.

<sup>43</sup> Section 13, paragraph 3, of the Law on Social Welfare.

<sup>44</sup> Section 29 of the Law on Social Welfare and Section 133, paragraph 5, of the Law on Administrative Organisation.

<sup>45</sup> Section 12, paragraph 2, of the Law on Social Welfare.

66. Any involuntary placement is automatically reviewed by the court upon expiry of the term of the placement order, if it is intended to prolong the involuntary placement. For that procedure the same rules apply as for the initial placement procedure. In addition, a judicial review of the necessity of the continued placement may be prompted at any time by his or her next-of-kin or legal representative. However, the relevant provision in the Law on Administrative Organisation<sup>46</sup> does not extend this right to the person concerned. **The CPT would like to be informed whether the right of the persons concerned to request at any time a discharge is otherwise formally guaranteed.**

67. In recent years, only a limited number of involuntary placement decisions had been taken by the court, most of them regarding cases of imminent danger where the patients concerned were transferred rapidly to an establishment in Switzerland.

The information gathered during the visit suggests that, in practice, involuntary placement procedures were carried out in compliance with the legal requirements set out above. In particular, patients were always seen by the judge in Liechtenstein or by a Swiss judge in Switzerland, following a request for judicial assistance. Upon receipt of the doctor's emergency placement report, the judge appointed, if necessary, a legal adviser,<sup>47</sup> and an expert opinion was ordered in all cases.

Further, the delegation noted that patients were always informed in writing of the avenues and deadlines for lodging an appeal against the court decision. However, it is a matter of concern that the relevant legislation does not contain any time limits during which a patient has to be seen by a judge in the context of emergency placement procedures. It would appear that, in practice, the patients concerned were never heard by the judge before a decision was taken (within five days) on the lawfulness of the emergency placement, but only before a final decision was taken on the continued involuntary placement.

**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).**

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<sup>46</sup> Section 133, paragraph 5.

<sup>47</sup> See footnote 41.

b. safeguards during placement

68. The authorities themselves acknowledged the fact that the current legal framework was deficient as regards the embodiment of patients' rights (including in the context of involuntary treatment), and indicated that a comprehensive reform of the (mental) health legislation was in preparation.

69. In this connection, the CPT wishes to emphasise that patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. Every patient, whether voluntary or involuntary, should be given the opportunity to refuse – either in person or through the guardian – treatment or any other medical intervention. Any derogation from this fundamental principle should have a legal basis and only relate to clearly and strictly defined exceptional circumstances. The admission of a person to a psychiatric/social welfare establishment on an involuntary basis should not be construed as authorising treatment without his or her consent.

Of course, consent to treatment can only be qualified as free and informed if it is based on full and accurate information about the patient's condition and the treatment which is proposed. In this connection, it is essential that all patients be provided systematically with relevant information as to their condition and the treatment proposed for them. Relevant information should also be provided following treatment (results, etc.).

**The CPT recommends that these precepts be taken into account in the preparation of the above-mentioned legal reforms. Further, the Committee would like to receive detailed information on the progress made in this regard.**

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

70. As already indicated, none of the residents accommodated at St. Mamertus Nursing Home at the time of the visit was held there on the basis of a court decision, although there had been such cases in the past. The delegation was informed that ten residents had been deprived of their legal capacity and had been placed in the Nursing Home with the consent of their guardian.

In practice, the level of freedom of residents to leave the premises only depended on their ability to comprehend and operate the keycode of the Nursing Home's entrance door, on which written instructions were posted. The delegation gained the impression that some residents who were not deprived of their legal capacity were not actually able to operate the code. Thus, they were *de facto* deprived of their liberty.

In such cases of retention (*Zurückbehaltung*), the relevant provisions of the Law on Social Welfare would in principle apply and the court would have to be notified, with a view to initiating an involuntary placement procedure (or, if appropriate, to depriving the person concerned of his/her legal capacity and appointing a guardian).

However, the delegation was informed that, in practice, such cases were never notified to the court. **The CPT recommends that this deficiency be remedied.**

71. As regards the situation of residents who are not able to give valid consent to their placement and are thus held in the Nursing Home with the approval given by the guardian on their behalf, the CPT considers that appropriate safeguards should be in place.

In this connection, the CPT noted with interest a practice which had developed at St. Mamertus, whereby every resident's situation within the establishment was reviewed once a year by a "round table" comprising the resident, his or her next-of-kin, the guardian, the resident's doctor and a member of the nursing home's staff. Round table meetings were organised more often if questions of autonomy and security arose in a given case, or in order to prevent a resident from further harm after having suffered a fall.

**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.**

## **APPENDIX I**

### **LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **Consultations and co-operation**

##### comments

- 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 (paragraph 9).

#### **Police custody**

##### **Preliminary remarks**

##### requests for information

- progress made regarding the legislative reforms underway at the time of the visit concerning pre-trial detention (paragraph 11);
- any changes made to the legal framework concerning the detention of foreign nationals under aliens legislation (paragraph 13).

##### **Ill-treatment**

##### recommendations

- the necessary steps to be taken to ensure that the precepts set out in paragraph 15 are respected by law enforcement officials (paragraph 15);
- police officers to 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 (paragraph 15).

##### requests for information

- detailed information regarding the procedures in force for examining complaints of police ill-treatment (paragraph 16);
- 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 (paragraph 16).

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

### recommendations

- the right to inform a relative or person of one's choice of one's situation, from the very outset of deprivation of liberty, to 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.) (paragraph 19);
- the relevant legislation (in particular, the Code of Criminal Procedure) to be amended 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 (paragraph 20);
- the necessary measures to be taken 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 (paragraph 22);
- in the framework of the current legislative reforms, the Law on Juvenile Justice to be amended with a view to ensuring compliance with the precepts set out in paragraph 23 (paragraph 23);
- the information leaflet referred to in paragraph 22 to contain a special section relating to the rights of juveniles (paragraph 23).

### comments

- the CPT 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 (paragraph 19);
- 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 (paragraph 24).

### requests for information

- 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 (paragraph 21);
- 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 (paragraph 25).

## **Conditions of detention**

### comments

- 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 (paragraph 26).

## **Vaduz Prison**

### **Preliminary remarks**

#### comments

- it would be desirable that the situation of immigration detainees be governed by specific rules, reflecting their particular status (paragraph 29).

#### requests for information

- 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 (paragraph 28).

## **Conditions of detention**

### recommendations

- the Liechtenstein authorities to 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 (paragraph 35).

### comments

- the Liechtenstein authorities are invited 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 (paragraph 36).

## **Health care**

### recommendations

- regular visits by a nurse to Vaduz Prison to be organised (paragraph 38);

- the involvement of prisoners in the distribution of medicines at Vaduz Prison to be immediately brought to an end (paragraph 39);
- the necessary measures to 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 (paragraph 40);
- measures to 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 (paragraph 41).

## **Other issues**

### recommendations

- the relevant provisions of the draft Law on the Execution of Sentences to be revised in such a way as to facilitate regular access to the telephone for sentenced prisoners (paragraph 44);
- a special register to be established for the use of the observation cell at Vaduz Prison (paragraph 45);
- the necessary measures to 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 (paragraph 47).

### comments

- the CPT 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 (paragraph 44);
- express mention should be made in the new Law on the Execution of Sentences of the entitlement of members of the inspection commission to speak in private to detained persons during their visits (paragraph 48);
- the Committee trusts that the inspection commission, like the President of the Court of first instance, will prove to be a frequent visitor to Vaduz Prison (paragraph 48);
- 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.) (paragraph 49).



requests for information

- detailed information regarding the status and training of the auxiliary staff (security officers) employed at Vaduz Prison (paragraph 42).

**Involuntary forensic placement**

comments

- 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) (paragraph 51).

requests for information

- comments 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 (paragraph 52);
- 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) (paragraph 52).

**Involuntary civil placement**

**St. Mamertus Nursing Home**

recommendations

- staffing levels at St. Mamertus Nursing Home to be kept under review (paragraph 62).

**Safeguards**

recommendations

- steps to 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) (paragraph 67);
- the precepts set out in paragraph 69 concerning consent to treatment to be taken into account in the reform of the (mental) health legislation (paragraph 69).

requests for information

- whether the right to request at any time one's own discharge from a psychiatric/social welfare establishment is formally guaranteed (paragraph 66);
- detailed information on the progress made as regards the reform of the (mental) health legislation (paragraph 69).

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

recommendations

- all cases of retention (*Zurückbehaltung*) of residents at St. Mamertus Nursing Home to be notified to the court (paragraph 70).

comments

- the Liechtenstein authorities are invited 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 (paragraph 71).

**APPENDIX II**

**LIST OF NATIONAL AUTHORITIES AND PERSONS  
MET BY THE CPT'S DELEGATION**

Klaus TSCHÜTSCHER	Deputy Prime Minister and Minister of Justice
Martin MEYER	Minister of the Interior and Health
Hugo QUADERER	Minister for Social Affairs
Willy BÜCHEL	Judge
Wilhelm UNGERANK	Investigating Judge
Uwe LANGENBAHN	Deputy Police Commissioner
Daniel MEIER	Head of the Serious Crime Unit
Ursula LENHERR	Governor of Vaduz Prison
Daniel SOCHIN	former Governor of Vaduz Prison
Oskar OSPELT	National Physician (Landesphysikus)
Manfred ÖHRY	Deputy National Physician
Thomas GSTÖHL	Head of the Asylum and Refugee Department, and Passport Office
Gert ZIMMERMANN	Immigration Legal Officer, Ministry of Justice, CPT Liaison Officer
Marcus BÜCHEL	Head of the Office for Social Services
Barbara REHBERGER	Head of the Therapeutic Services, Office for Social Affairs
Herbert KIND	Director, St. Mamertus Nursing Home
Kurt SALZBERGER	Head of the Health-Care Section, Mamertus Nursing Home St.