



Presidency of / Pr sidence du  
**LIECHTENSTEIN**  
Council of Europe / Conseil de l'Europe  
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## High-level Conference

organised by the Liechtenstein Presidency of the Committee of Ministers in cooperation  
with the Department for the Execution of Judgments of the European Court of Human Rights

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### “Of Unsound Mind”: Convention-compliant approaches to the execution of judgments concerning involuntary detention and treatment on mental health grounds

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Strasbourg, 27 March 2024

## CONCEPT NOTE

### Background

1. Recent years have seen considerable development in the jurisprudence of the European Court of Human Rights in matters relating to mental health and psychiatric compulsion. While the basic Convention principles established in the last quarter of the twentieth century remain intact, developments in the case law since that time have significantly shifted the legal ethos. Reflecting developments in disability and human rights nationally and internationally, the European Court is rearticulating its psychiatric jurisprudence.
2. The developments fall into two broad categories. The first concerns the procedural safeguards surrounding compulsion. Part of that involves well-established but evolving ECHR case law (commencing with *Winterwerp v. the Netherlands* in 1979) concerning the safeguards of detention – classic Article 5 issues. These safeguards are being given more precision and nuance, however, in matters such as the meaning of the phrase ‘persons of unsound mind’, the concept of ‘deprivation of liberty’, introducing requirements of least restrictive option and proportionality, appropriate locations for detention, and purposes of detention. Rules regarding the standard of psychiatric assessments are being buttressed, and enhanced requirements to ensure access to courts and proper representation for people detained have been strengthened. More recently, the requirement for safeguards of other forms of compulsion, most notably concerning compulsory psychiatric treatment, have been expressly set out.
3. The second category concerns the substance of what happens in the relevant institutions, and the appropriate roles of institutional and non-institutional care. Some of this concerns overall conditions of institutions that affect most or all of the people contained: occupancy, staffing levels, sufficiency of food and other basic necessities, engagement with the broader

community, and the like. Others are more specific to particular individuals: does the institution have appropriate treatment for the health needs of the individual person detained? Some fall outside such neat categorisation: how is restraint regulated, for example, and how is it in practice used? And how is the appropriate line between institutional and non-institutional care to be drawn?

4. While the case law is moving forward, implementation appears to be lagging behind. This conference will look at how implementation may be progressed.
5. The **first panel** will consider contextual issues about the conference and about reform. That includes an acknowledgement of national and international developments including an array of other initiatives of the Council of Europe. The role and importance of people with lived experience of mental distress (and their civil society organisations) and human rights NGOs in the development and implementation of responses to ECHR standards will also be discussed.
6. The **second panel** will consider developments in formal legal safeguards. That will include a summary of ECHR requirements, and the experience of people who know those processes. Particular panels will focus on the relatively new ECHR requirements for safeguards relating to compulsory treatment (flowing from *X v. Finland*), and effective advocacy services for people in the psychiatric system.
7. The **third panel** will consider what happens in psychiatric hospitals and similar environments. It will discuss the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and include the experience of people living in those institutional environments. There will be discussions of how compulsory treatment can be minimised and how transitions can be made from institutional to community care.