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OHCHR REGISTRY

23 APR 2010

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Schaan, April 22, 2010
Mag. FM/se

Annual Report 2009 of the Liechtenstein NPM

Dear Mr. Gillibert

I refer to your letter, dated 12 March 2010, in which you invited me to share our Annual Report in English to be published on the OPCAT webpage. Therefore, please find attached the translated version of the Annual Report 2009 of the Liechtenstein National Prevention Mechanism.

Sincerely yours

Mag. iur. Franziska Monauni LL.M.
Chairwoman of the Liechtenstein NPM

Annual Report 2009
of the Liechtenstein National Preventive Mechanism
according to Art. 17 ff. of the Optional Protocol to the Convention Against
Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
(OPCAT)

I. INTRODUCTORY REMARKS

A) Dates of the individual visits and composition of the National Preventive Mechanism:

1. In accordance with Art. 17 ff. of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (LGBI. 2007, No. 260), the National Preventive Mechanism (designated below as NPM) paid several visits to Vaduz National Prison in 2009. The individual visits took place without prior notice in each case on the following dates:

- 09 March 2009, from about 11.15 a.m. to 13.45 p.m.
- 18 May 2009, from about 10.45 a.m. to 12.15 p.m.
- 24 August 2009, from about 11.00 a.m. to 12.30 p.m.
- 16 November 2009, from about 11.00 a.m. to 12.45 p.m.

2. These visits were carried out in each case by the following members of the NPM, all being present:

- Mag. iur. Franziska Monauni, LL.M., Chairperson of the Liechtenstein Corrections Commission and of the Liechtenstein NPM
- Extraordinary University Professor Dr. Andreas Venier, Deputy Chairperson of the Liechtenstein Corrections Commission and of the Liechtenstein NPM

- Edmund Pilgram, Member of the Liechtenstein Corrections Commission and of the Liechtenstein NPM
- Isolde Kieber, Member of the Liechtenstein Corrections Commission and of the Liechtenstein NPM
- Dr. med. Gernot Singer, Member of the Liechtenstein Corrections Commission and of the Liechtenstein NPM

B) Visit(s) to institutions:

3. In 2009, the NPM visited the following place(s) of detention:

- Vaduz National Prison including the isolation and the police cell

The treatment of persons who can be held in other places of deprivation of liberty such as, for example, the secure room for prisoners at the National Hospital, in the detention facility at the Feldkirch / Schaanwald Customs border office and in retirement homes will be examined again by the NPM in 2010.

C) Miscellaneous:

4. In all, the collaboration of the Liechtenstein authorities with the NPM during its visits was very good. In particular, the NPM was granted immediate access to all the facilities it wished to visit and it was possible for the NPM to hold confidential discussions with all the persons with whom it wished to talk. Furthermore, both the Government officers as well as the persons in charge of the facilities visited and their staff were most helpful.

On 24 August 2009, at the request of the NPM, a discussion took place with Minister of Justice, Dr. Aurelia Frick, and Minister of Home Affairs, Hugo Quaderer. On the occasion of this discussion, the NPM set out its recommendations as already formulated in the quarterly reports of the Corrections Commission and in the Annual Report 2008 of the NPM. This approach was considered very positive by both Ministers and it

was consequently agreed that such a meeting for the exchange of information should be held once per year in future.

On 31 August 2009, at the suggestion of the Liechtenstein Office for Foreign Affairs, the NPM attended an APT training seminar on the work of national preventive mechanisms in accordance with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Liechtenstein. The exchange of experience within the scope of this seminar was interesting and useful for the future work of the NPM.

Finally, on 18 January 2010, at the request of the NPM, a discussion took place with the Deputy Chief of Police, lic. iur. Uwe Langenbahn, during which some issues concerning police custody which had already featured in the latest quarterly reports of the Corrections Commission as well as in the Annual Report 2008 of the NPM were jointly discussed.

II. FACTS IDENTIFIED DURING THE VISITS AND RECOMMENDATIONS MADE

A) Vaduz National Prison:

As already mentioned at the beginning, the NPM paid four unannounced visits to Vaduz National Prison in 2009. The number of detainees during the visits varied between 5 und 10 and included both convicted prisoners and prisoners on remand as well as detainees awaiting deportation. In the last quarter of 2009, juveniles were also in custody, including one female person.

In every case, Prison staff readily provided the NPM with the information desired and allowed inspection of all the corrections records requested. Immediate access was likewise granted to all facilities that the NPM wished to visit. It was also possible to carry out confidential discussions with all the persons with whom the NPM wished to talk. Confidential discussions were held not only with Prison staff and with the Management of the prison but also with convicted prisoners, prisoners on remand and detainees awaiting deportation in the form of individual and also group interviews. In all, as already in 2008,

during these visits the NPM was able to gain a good overview of the detention conditions which overall it continues to consider as positive.

No complaints whatsoever of mistreatment or other inhuman treatment were made by the detainees. On the contrary, the impression of a good atmosphere within the Prison was conveyed.

Despite this basically positive overall impression gained by the NPM (or the Corrections Commission) during its visits, there still remains a certain need for change with reference to current procedures which are examined and explained below, together with recommendations. On the one hand, this concerns known facts and recommendations already noted in the Annual Report 2008 while on the other, new points are raised.

1) Space resources:

The restricted space available and the shortage of staff at Vaduz National Prison continue to be the cause of various deficits in the treatment of detainees. These are explained in detail below:

a) Provision of work:

As in 2008, the NPM confirmed again last year that the Management of the prison is certainly trying to find work for the inmates. Nonetheless, the space available in the National Prison does still not allow any regular and worthwhile work to be carried out. Admittedly, it was noted that the National Prison received several jobs from the National Administration in recent months and also a few from Hoval AG but one cannot yet talk of any regularity in this connection. This means that weeks pass time and again when there is no possibility of work for the prisoners. This may be due, among other things, to the unfavorable economic situation. Above all, however, because of the restricted space inside the prison, a large range of work, such as handcraft, for instance, cannot be carried out anyway.

Apart from the problem of the lack of work possibilities, the leisure activities of the detainees are also limited. As in the past, these are restricted to the use of the courtyard, the sports room and the library. There is currently no opportunity, precisely with regard to the problem of the lack of work already mentioned, for them to take part in any project-related artistic work, as also intended in the provision of Art. 59 of the Execution of Sentences Act (StVG).

In view of the special importance of work and leisure activities for the resocialization of prisoners, the NPM recommends to the Princely Government once again to continue all previous efforts with perseverance so that a regular provision of work can be assured. In this connection, thought should be given to extending the space available and, as an interim measure, to offering a range of worthwhile leisure projects.

b) Uniform rules of allocating competence:

Already in the Annual Report 2008, the NPM drew attention to the unsatisfactory situation in the field of corrections in Liechtenstein with regard to the currently mixed competences of the Ministry of Justice and the Ministry of Home Affairs. This can lead not only to uncertainty and misunderstandings on the national level as to which authority is competent but is also not consistent with European standards. For example, Recommendation 2006(2) of the Committee of Ministers of the Council of Europe of 11 January 2006 in Principle No. 71 expressly states that the responsibilities for penal institutions are to be separated from police or investigating authorities. The continuing competence and organizational influence of the police authorities with regard to the field of corrections in Liechtenstein is therefore an unjustifiable state of affairs in the view of the NPM.

The implementation in practice of the provision of Art. 89 StVG by the Prison Management and the National Police already criticized in the Annual Report 2008 is the best example of the synergy that exists between the penal system and the National Police. This provi-

sion of the law expressly states that, at the request of authorities or of the National Police, their departments are to be given the opportunity to interrogate a prisoner in the National Prison in the presence of a corrections officer. In practice, this regulation is a dead letter since prisoners are not interrogated by the National Police in the presence of a corrections officer but for this purpose are taken away by the National Police in each case. This illegal procedure is explained by the circumstance that, due to the limited space and personnel resources of the National Prison, it is not possible for interrogations to be held in the National Prison in the presence of a corrections officer precisely because of the lack of an interrogation room and because of the shortage of personnel.

It is indeed recognized as a positive step that the Prison Management, at the suggestion of the NPM, has in the meantime introduced a protocol in which every removal of a prisoner by the police for interrogation is documented. In the long term, however, it will be necessary to take account of the applicable provisions of law.

The NPM therefore reiterates its recommendation to the Princely Government that in future, with regard to legal competence, corrections should be made the exclusive competence of the Ministry of Justice to preclude abuses and to create uniform rules allocating competence that complies with European standards. In particular, with regard to the application within the law of the provision of Art 89 StVG, the NPM calls for a solution be found to the shortage of space and personnel resources in the National Prison.

2) Corrections personnel:

Already in the Annual Report 2008, the NPM emphasized the training of corrections officers and supervision as an important part of a well-ordered penal system. Since the NPM was not convinced that last year the further training and supervisory courses organized for them were used by the corrections officers in actual fact, **the NPM recommends**

to the Princely Government to create a basis for an obligation for corrections officers to attend such further training and supervisory sessions.

3) Dispensation of pharmaceuticals:

The NPM discovered that in Vaduz National Prison pharmaceuticals were currently distributed not by medically trained staff but by corrections officers. The NPM criticized this circumstance in its capacity as the Corrections Commission in its 3rd quarterly report 2009 and is pleased to note that the Prison Management has already promised changes regarding this matter and has initiated the corresponding steps, i.e., is seeking a suitably trained person.

The NPM recommends to Princely Government to support the Prison Management in its intention to implement a change in this connection.

4) Therapeutic service:

During the visits, it came to the attention of the NPM that the previous practice whereby a psychologist of the Office for Social Services visited the National Prison every two weeks and could be consulted by the inmates had been discontinued. At the present time, the only possibility for a convicted prisoner is to request on his own initiative a visit by a psychologist. On the other hand, it is no longer possible for the regular visit of a psychologist to the National Prison to be used for a spontaneous consultation.

In view of the eminent importance of the therapeutic service for the maintenance of the mental health of the inmates, the care of which is prescribed by Art 62 StVG, it is recommended to the Princely Government that it should ensure the re-introduction of the previous practice as quickly as possible, i.e., that a regular therapeutic service is again established in the National Prison.

B) Police custody:

As already mentioned in the introduction to Point I of this Annual Report, a discussion took place at the request of the NPM with the Deputy Chief of Police, lic. iur. Uwe Langenbahn, on the occasion of which various questions concerning police custody already raised in the Annual Report 2008 but also of recent topicality were jointly discussed.

Apart from the central subject of the practical implementation of Art 89 StVG, which was already explained in detail under Point II A) 1 b), the NPM inquired in particular from lic. iur. Uwe Langenbahn about police procedure regarding the arrest or detention of persons. In view of a statement made to us by a detainee according to which he was persuaded, when being arrested by the police, that there was no need to contact a lawyer, we expressly referred to the central importance of the provision of Art 128a of the Code of Criminal Procedure (designated below as StPO), which specifies that any person arrested is to be informed on his arrest or immediately afterwards of the suspected offense and of the grounds for his arrest as well as, among other things, of his right to contact a family member or another person of his confidence and a defense counsel. We also pointed out the right of every person arrested to have access to a doctor. It was namely found precisely with regard to this latter point in the internal service instructions of the Police concerning arrest and detention procedures, which were made available to us in writing, that a doctor may only be informed when the police officer on duty considers it necessary in view of the state of health of the person detained. It must be ensured, however, that the detainee must be informed in every case immediately after his arrest of his right to have access to a doctor.

In view of the crucial importance of these initial information rights of an arrested person, the NPM recommends to the Princely Government to ensure that the corresponding information about such rights should first be given to the detainee not by corrections officers but without delay by the police officers involved in the arrest.

Schaan, 1 February 2010