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31 MARS 2011

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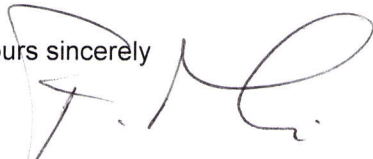
Schaan, March 30, 2011
Mag. FM/se

Annual Report 2010 of the Liechtenstein NPM

Dear Mr. Gillibert

Referring to our correspondence of last year please find enclosed to this letter the Annual Report 2010 of the Liechtenstein National Prevention Mechanism for your attention.

Yours sincerely



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

Annual Report 2010
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 (LGBl. 2007, No. 260), the National Preventive Mechanism (designated below as NPM) paid several visits to places of detention in the Principality of Liechtenstein in 2010. The individual visits took place without prior notice in each case on the following dates:

- 22 March 2010, from about 12.00 p.m. to 1.50 p.m.
- 14 June 2010, from about 11.00 a.m. to 1.45 p.m.
- 30 June 2010, from about 4.00 p.m. to 5.00 p.m.
- 9 September 2010, from about 10.45 a.m. to 12.30 p.m.
- 22 November 2010, from about 11.00 a.m. to 2.00 p.m.

2. With the exception of the visit on 22 March 2010, during which one member of the NPM was absent due to sickness, and the visit on 30 June 2010, during which one member of the NPM was unable to attend due to professional reasons, 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
- Univ. Prof. 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) Visits to the institutions:

3. In 2010, the NPM visited the following places of detention:

- Vaduz National Prison
- Liechtenstein National Police
- Liechtenstein Elderly and Care Service, St. Florin House, Vaduz

C) Miscellaneous:

4. In all, the collaboration of the Liechtenstein authorities with the NPM during its visits was again very good this year. 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 responsible contact persons of the facilities visited were most helpful.

On 18 August 2010, the annual exchange between the members of the NPM and the responsible Ministers Dr. Aurelia Frick, Ministry of Justice, and Hugo Quaderer, Ministry of Home Affairs, took place. This meeting was also attended by the Government officers Ms. Ivana Ritter, Dr. Gert Zimmermann, and Dr. Erik Burgstaller, as well as Deputy Chief of Police

lic. iur. Uwe Langenbahn, LL.M., who formally also serves as Director of the National Prison.

On the occasion of this meeting, the recommendations already made in writing by the Corrections Commission in two quarterly reports in 2010 were discussed, and specific approaches to solving the enumerated problems were developed. Already prior to this meeting, talks took place on 23 June 2010 between the Chairperson of the NPM and the above mentioned Government officers, during which the problems raised by the NPM and the Corrections Commission were discussed in preparation for the meeting with the Ministers on 18 August 2010.

Finally, at the request of the NPM, a discussion took place on 14 June 2010 with the Liechtenstein National Police, specifically with Chief of the Criminal Police lic. phil. Jules Hoch, Deputy Chief of Police lic. iur. Uwe Langenbahn, and other staff of the National Police. During this discussion, some questions concerning police custody which had already been raised in the latest quarterly reports of the Corrections Commission as well as in the Annual Reports 2008 and 2009 of the NPM were discussed. Details are presented below in Point II) B).

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 2010. The number of detainees during the visits varied between 6 and 16 and included both convicted prisoners and prisoners on remand as well as detainees awaiting deportation. They were primarily male, although some of the detainees in 2010 were female, and two juveniles were also in custody.

In every case, Prison staff readily provided the NPM with the information desired and granted 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 for the NPM to carry out confidential discussions with all the persons with whom the NPM wished to talk. Confidential discussions were held on a regular basis 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 and 2009, 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 detainees in relation to imprisonment. 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 need for reforms in certain respects, as will be discussed below together with recommendations. By and large, these concern known facts and recommendations already noted in the Annual Reports 2008 and 2009.

1) Space resources:

The NPM is aware that, in light of the small size of the Principality of Liechtenstein, solutions that are appropriate to the size and that conserve resources must be found for existing problems. This is true in particular of the existing problems relating to the shortage of space and personnel in the Vaduz National Prison. Despite some welcome changes in the last year, the NPM believes that this continues to be the cause of existing deficits in the treatment of detainees, as is explained in detail below:

a) Work and leisure activities:

The NPM was pleased to note that the efforts of the Management on behalf of providing detainees with work and leisure activities are ongoing and that the previous recommendations by the NPM in this regard have been taken up accordingly. On the occasion of its visits,

the NPM noted that more wood and painting jobs for projects of the National Public Administration are being undertaken, in which a large number of the detainees are able to participate. All these efforts play an important role in ensuring in future that the right of detainees to engage in regular work of a useful nature is ensured.

Despite these positive findings in regard to recreational activities, it was again noted that the detainees continue to suffer from the irregular and therefore unsatisfactory work situation in the National Prison and would like to engage in regular work beyond sporadic recreational projects. Since, in accordance with Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe of 11 January 2006, Principles No. 26.2, 26.9 and 100.1, prison authorities are obliged to provide sufficient work of a useful nature, either on their own or in co-operation with private contractors, inside or outside prison (this also applies to prisoners on remand), it is important that the Vaduz National Prison continue to undertake all efforts to this end. In our view, the circumstance must not be taken into account that the Government is unaware of any detainee in the National Prison ever having requested transfer to an Austrian prison in light of the available work and leisure activities. The detainees in the National Prison suffer from the unsatisfactory activity situation, even if none of them have ever requested such a transfer.

For instance, it is currently also not possible for detained juveniles to participate in the above mentioned projects, since juveniles must be separated from adult convicted prisoners during the execution of their sentence, in accordance with § 33 para. 1 of the Juvenile Court Act. Specifically in regard to detained minors, Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe of 11 January 2006 requires that, in addition to the services available to all prisoners, minors have access to the social, psychological and educational services, religious care and recreational programs or equivalents to them that are available to minors of the same age outside the prison. Additionally, every minor subject to compulsory

education shall have access to such education (Principles No. 35.1 and 35.2).

The NPM is aware that significant improvements in this regard can only be achieved through building measures, i.e. through the creation of workshops, but that this might overstrain the existing resources in light of the small size of the National Prison. For this reason, the NPM appreciates that the Government has, pursuant to its suggestions, held out the prospect for the Management of the National Prison to approach the Management of the Saxerriet Prison in neighboring Switzerland, in order to explore possible cooperation of the two institutes in regard to regular provision of work, as a solution that would preserve resources. In particular, the fact is also welcomed that the Management has meanwhile enabled a detained juvenile to pursue an apprenticeship with a Liechtenstein business and to leave the Prison for this purpose during the day.

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 particular, the possibility of cooperating with the Saxerriet Prison in neighboring Switzerland should be pursued.

b) Uniform rules of allocating competence:

Already in the Annual Reports 2008 and 2009, 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 it is also not consistent with European standards. For example, Recommendation Rec(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.

Especially in light of the fact that the National Prison is primarily conceived as a remand prison, it should not be subordinate to the National Police. In accordance with the above principle, remand should be outside the influence of the police, as has also been confirmed in 1955 (finding of 17 March 1955, published in *öJbl* 1955, 400) by the Constitutional Court of the Republic of Austria, whose Code of Criminal Procedure and Execution of Sentences Act served as the basis for the corresponding laws in Liechtenstein.

The NPM would like to believe that the organizational and spatial proximity of the National Prison to the National Police has for decades never led to grievances, as is frequently argued by the Liechtenstein authorities in this regard; but in the view of the NPM, this changes nothing about Liechtenstein's obligation to implement Principle No. 71, according to which penal institutions are to be separated from police or investigating authorities. That such grievances are certainly also possible in the Vaduz National Prison or the National Police can moreover be seen in the generous interpretation of Art. 90 of the Execution of Sentences Act (StVG) so far by the National Police. It is true that Art. 90 para. 1 StVG permits convicted prisoners to be removed from the Prison on administrative grounds. Art. 90 StVG does not, however, speak of interrogations, which is why they are not permissible pursuant to that legal provision. Interrogations are governed solely by Art. 89 StVG, which permits them only after consultation with the Management and only subject to supervision of a corrections officer in the premises of the Prison.

So that the provision in Art. 89 StVG can in practice henceforth be complied with in accordance with its purpose, however, such premises must be available within the National Prison in which interrogations can be carried out in compliance with the law. All the more, the NPM therefore welcomes the result of the meeting of 18 August 2010, at which the Princely Government indicated that the compe-

tent offices would evaluate the possibility of converting a visitors' room, a prisoner cell, or the doctor's room into an interrogation room. In this way, and by setting up video surveillance, a legally compliant state of affairs might be brought about in a manner that preserves resources.

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.

c) Corrections personnel:

The NPM welcomes that an additional position was filled in the National Prison at the beginning of the year and that there are now a total of five full-time corrections officers and one full-time Director.

The fact is especially gratifying that in 2011, a female corrections officer has been employed in the capacity of help as needed, so far temporarily for half a year.

Finally, the NPM recognizes that some corrections officers are using the supervision courses. The immense importance of supervision and further training courses in the field of corrections has already been noted several times by the NPM in the past.

The NPM therefore recommends to the Princely Government to create a basis for regular, and in part obligatory, supervision and further training courses for corrections officers. In addition, it should continue to be ensured that the entitlement of female detainees to be taken care of by female corrections officers is honored.

d) Dispensation of pharmaceuticals:

Finally, the NPM welcomes the fact that the Management has enabled two corrections officers to attend paramedic training, so that dispensation of pharmaceuticals in the Vaduz National Prison by medically trained staff is henceforth ensured.

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 on 14 June 2010 with the Liechtenstein National Police, specifically with Chief of Criminal Police lic. phil. Jules Hoch, Deputy Chief of Police lic. iur. Uwe Langenbahn, and other staff members of the National Police. On the occasion of this meeting, in particular the information practices of the National Police upon arrest and the preconditions for the use of restraints were discussed.

a) Information

Already in its Annual Report 2009, the NPM drew attention to the importance of providing the arrested person with full and comprehensible information concerning his rights in accordance with § 128 of the Liechtenstein Code of Criminal Procedure. The interrogating officer must, in addition to furnishing the arrested person with an information sheet, in any event explain the person's essential rights (to contact a person of confidence and a defense counsel, consultation with a defense counsel prior to interrogation, a medical examination, and the right to remain silent) using simple words and in person, otherwise these rights are illusory. Police officers should be trained with respect to this information requirement.

At the meeting on 18 August 2010, it was discussed that certain passages in the information sheets used by the National Police may be misleading for a layperson in the tense situation of being arrested. This is especially true in view of the right of the arrested per-

son firmly established in the European Convention on Human Rights to speak with a defense counsel about the alleged offense prior to interrogation and the right to remain silent.

The NPM welcomes that the National Police has already undertaken efforts to adjust the wording of the information sheets used by the National Police in this regard.

b) Restraints

According to Art. 27a of the Liechtenstein Police Act, persons may be put in restraints if

- there is a suspicion that the person intends to flee or may be freed;
- the person resists;
- there is a justified suspicion that the person will attack people or damage property of substantial value;
- there is a justified suspicion that the person will inflict harm upon or kill himself; or
- the use of restraints is called for to protect police officers or third parties.

Additionally, the general principle of proportionality must be upheld according to Art. 23 of the Liechtenstein Police Act when applying the individual provisions.

The NPM is aware that the arrest of a suspect can be a difficult and dangerous undertaking. Nevertheless, the NPM believes that the potential threat must be assessed for each arrest and especially for each transfer of prisoners on remand to court hearings and doctor's visits on a case-by-case basis, bearing in mind the above mentioned legal provisions, instead of automatically using restraints as currently practiced by the National Police. § 187 para. 2 of the Liechtenstein Code of Criminal Procedure must also be taken into account, according to which the accused shall appear in court for

trial without restraints, if this is possible without danger, but with police supervision if the accused is in detention. In the view of the NPM, police supervision as referred to in this provision should not automatically entail the use of handcuffs.

Finally, the NPM took notice of an article published on 14 October 2010 in the Liechtenstein daily newspaper "Liechtensteiner Vaterland". This article reported on court proceedings in which the suspects made serious accusations against the Liechtenstein police in connection with their arrest, and in particular that textile bags had been pulled over their heads. The National Police denied the accusation, but according to the newspaper article did confirm that the suspects had been restrained, that a paper bag had been put over their hands to protect evidence, and also that they had been made to wear darkened ski goggles.

In this connection, the NPM refers to the report of the CPT of 6 July 2007, which notes that the CPT had already on the occasion of its visit to police facilities and the Vaduz National Prison in February 2007 criticized, in light of similar accusations, that there is no justification for covering the heads of arrested persons with a bag or otherwise, or for making them wear darkened ski goggles, and that this practice should be discontinued.

The NPM therefore recommends to the Princely Government to take the necessary measures to ensure that these principles are met. The officers of the Liechtenstein National Police should regularly be trained that restraints should not be automatically used, but rather only in the event of specific danger and only in a careful manner that preserves the personal dignity of the person concerned.

C) Liechtenstein Elderly and Care Service, St. Florin House, Vaduz

On 22 November 2010, the NPM visited the Liechtenstein Elderly and Care Service at St. Florin House in Vaduz for the first time. This visit lasted from about 11.00 a.m. to about 12.15 a.m., during which an extensive talk took place with Home Director Remo Vogt, who explained the details of the senior home to the NPM and gave it a tour. The NPM encountered excellent conditions, as can also be seen by anyone on the website www.st.florin.li.

The residents live in two wings: one is an open wing, and the other is a wing for residents with dementia. The residents in the open wing, like their family members, have the option of entering and leaving the residence at any time. But also in the wing for dementia patients, the use of restrictive measures is kept to a minimum; using a special code system, the dementia patients also have nearly unrestricted access to their own outdoor area.

All residents have spacious individual rooms with large windows and a balcony. The sanitary installations in the rooms and in the shared washrooms meet excellent standards of hygiene. The supply and care of residents is ensured in an exemplary manner and is organized according to an individualized approach. Additionally, there are spacious eat-in kitchens and common rooms, in which events for the residents regularly take place.

The NPM would like to report to the Princely Government that the conditions encountered in Florin House are excellent.

Schaan, 15 February 2011