

Liechtenstein Country Report

First Report Pursuant to Article 40

**of the International Covenant on Civil and
Political Rights of 16 December 1966**

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FOREWORD

The following report, adopted by the Government of the Principality of Liechtenstein on 10 June 2003, is submitted pursuant to article 40 of the International Covenant on Civil and Political Rights of 16 December 1966. The report presents legislative, administrative, and other measures that have been taken in line with the Covenant. This is the first country report of Liechtenstein, covering the time period through 31 March 2003.

The first part of this report, following the reporting guidelines for human rights instruments, comprises general information on Liechtenstein and the respect for human rights. The second part follows the general guidelines of the Human Rights Committee, the treaty body of the International Covenant for Civil and Political Rights.

**GOVERNMENT OF
THE PRINCIPALITY OF LIECHTENSTEIN**

PART 1: GENERAL INFORMATION

I. Land and people

A. Geography

The Principality of Liechtenstein covers an area of 160 square kilometres and is enclosed between Switzerland and Austria. The highest point in Liechtenstein is 2,599 metres (the Grauspitze), and the lowest point 430 metres above sea level (the Ruggeller Riet). A quarter of the land area is situated in the Rhine valley, while the other three-quarters are on the surrounding slopes and in the inner regions of the Alps. The settlement structure of Liechtenstein in the Rhine Valley is characterized by a considerable urban sprawl. The population is spread over 11 communes, the two largest of which have a population of just over 5,000 each. The capital and seat of government of Liechtenstein is Vaduz, with 4974 inhabitants.

B. Population

As of December 2001, Liechtenstein has a resident population of 33'525, 34.3 per cent of which are foreigners. Of all the foreigners resident in Liechtenstein, 47.5 per cent are from countries participating in the European Economic Area (EEA)¹, mainly Austria and Germany, and 32.6 per cent are from Switzerland. Other countries account for 19.9 per cent, which includes 7.6 per cent from Turkey and 8.9 per cent from States of the area of the former Yugoslavia (including Serbia-Montenegro, Bosnia-Herzegovina, Croatia, Macedonia and Slovenia).

C. Population structure

For the last 10 years, the average birth rate has been 400 per year. Infant mortality has been decreasing steadily since the 1950s, and Liechtenstein now has a very low infant mortality rate. During the last 10 years, an average of 3 out of every 1,000 children died within one year of birth.

In December 2001 18.5 per cent of the population were under 15 years of age, while 10.5 per cent of the population were older than 65. Average life expectancy has been rising steadily for the past 30 years, and averaged 82.5 years for women and 76.5 years for men.²

D. Religion

In December, Roman Catholics made up 76.5 per cent of the total population, Protestants accounted for 7.0 per cent and Muslims 3.9 per cent, while 10.5 per cent of the population did not specify their religious affiliation.

¹ The European Economic Area consists of the 15 member States of the European Union, as well as Iceland, Liechtenstein and Norway, which are member States of the European Free Trade Association (EFTA).

² No data on average life expectancy is specifically collected in Liechtenstein, due to its small population. Data presented here are taken from the Swiss Statistic Yearbook of 2001 and do also reflect the situation in Liechtenstein.

The Constitution of Liechtenstein guarantees freedom of belief and conscience, and also guarantees civil and political rights irrespective of one's faith. Children may be excused from religious education in public schools by invoking religious freedom.

Under the Constitution, the Catholic Church is the established church of Liechtenstein. The State provides financial support to the Catholic Church, as well as to the Protestant Church. As a result of the establishment of the Archdiocese of Liechtenstein, the issue of the separation of Church and State is currently being examined.

E. Languages

The Constitution establishes German as the national and official language of Liechtenstein. A German dialect with Alemannic characteristics is commonly spoken.

II.. Education System

A. Public education

The public education system in Liechtenstein comprises compulsory education and various forms of further education (technical college, apprenticeships, vocational school and evening school). While there is no State-run university in Liechtenstein, access to university education in neighbouring States is guaranteed by means of bilateral treaties. For children and adolescents between the ages of 7 to 16 there is a period of nine years' compulsory school attendance – five years of primary and four years of secondary school. Graduating from upper secondary school (Gymnasium) requires 13 years of study. For non-German-speaking children of school age intensive German language courses are provided for. These courses are well integrated into the public school curriculum and promote the integration of the children concerned at both the linguistic and the cultural levels. Moreover, the State provides support, in the form of the necessary infrastructure, for language and social studies courses relating to their country of origin that are organized by private bodies (foreign associations).

B. Private education

Currently, there are two private schools and two private universities (the International Academy for Philosophy and the University of the Arts) in Liechtenstein.

Under the provisions of the Education Act, the establishment and operation of private schools in Liechtenstein is subject to authorization based on a guarantee of universally accessible instruction that is in conformity with relevant regulations and consistent with the purposes of the national education system. The curricula of private schools must be in line with those of public schools.

III. General political structure

A. Form of Government

The Principality of Liechtenstein is a hereditary constitutional monarchy with democratic and parliamentary traditions. The power of the State is vested in the Prince

and in the people. The relatively strong position of the Reigning Prince is counter-balanced by extensive direct-democratic rights of the people.

B. Division of powers

In the dual system of government of the Principality of Liechtenstein, the power of the State is vested in the Prince and in the people. The division of powers is further ensured by the fact that the executive (the Government), the legislature (the Diet) and the judiciary (the courts) all have their own authority. As the Government is appointed by the Prince on the recommendation of the Diet, the majority in the Diet is also the majority in the Government.

C. The Prince

The Prince has a powerful position in the structure of the State of Liechtenstein. He is the Head of State and represents the State in all its relations with foreign countries, notwithstanding the need for the cooperation of the Government in power. He appoints the members of the Government on the recommendation of the Diet. The election of the judges is prepared by a special body composed of representatives of the Diet, the same number of representatives appointed by the Prince, the Prince himself as well as the Minister of Justice. This body recommends candidates to the Diet for election. If the Diet elects a candidate, the Prince must appoint the candidate. If the Diet rejects a candidate, and if the Diet and the nominating body are unable to reach an agreement within one month, the Diet shall nominate an opposing candidate and set the date for an election by the people. The Prince must appoint the candidate elected by the people.

D. The Parliament (Diet)

The Parliament of Liechtenstein, known as the Diet, is elected for a term of four years. The Diet consists of 25 deputies who are elected through universal, equal suffrage by direct and secret ballot in accordance with the system of proportional representation. During the current term (2001–2005), three parties are represented in the Diet – the Progressive Citizens' Party (FBP) with 13 seats, holds an absolute majority, the Patriotic Union (VU) has 11 seats, while the Free Voters' List (FL) is represented by 1 seat.

The principal functions of the Diet are to participate in the elaboration of legislation, approve international treaties, pass the State budget, make recommendations regarding the appointment of the Government, elect the judges upon recommendation by the special election body and supervise the national administration. The quorum for decision-making in the Diet is two thirds of the deputies.

E. The Government

The Government consists of five members: the Head of Government, the Deputy Head of Government and three other members. The members of the Government are appointed by the Prince on the recommendation of the Diet. The Head of Government must countersign all decrees and orders issued by the Prince, as well as legislation endorsed by the Prince. The Government is the highest executive body in the land, with authority over some 30 departments, a number of diplomatic missions abroad, and

offices. The administration is supported in its work by some 50 commissions and advisory councils.

The Government has the authority to issue ordinances and, therefore, also functions as a legislative body. Ordinances may, however, only be enacted within the context of existing laws and international treaties.

F. Jurisdiction

Jurisdiction is divided into public law (special) jurisdiction and general jurisdiction. Public law jurisdiction rests in the Administrative Court (Verwaltungsbeschwerde-Instanz) and the Constitutional Court (Staatsgerichtshof). The Chief Justice of the Administrative Court and the Deputy Chief Justice are appointed by the Prince on the recommendation of the Diet. Appeal court justices are appointed by Parliament, for a four-year term that runs concurrently with the term of office of the Diet. The Administrative Court hears appeals against decisions and orders of the Government or of commissions acting on its behalf. There can be no further ordinary appeal against rulings of the Administrative Court. The Constitutional Court is charged, in particular, with the protection of the rights guaranteed in the Constitution and set forth in the European Convention on Human Rights as well as in other human rights instruments: the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. The Court also rules on the constitutionality of laws and the legality of ordinances issued by the Government.

General jurisdiction entails the administration of justice in civil and criminal cases. The principles of oral examination, personal appearance and free submission of evidence apply, as well as the accusatory principle in criminal cases. The court of first instance is the Court of Justice (Fürstliches Landgericht) in Vaduz. In respect of civil litigation, a mediation procedure must first be conducted in the defendant's place of residence before a suit can be brought to the Court of Justice. Only if this fails, can application be made to the Court of Justice as the court of first instance. The court of second instance is the Court of Appeal (Fürstliches Obergericht) and the court of third instance the Supreme Court (Fürstlicher Oberster Gerichtshof).

G. Communes

The political landscape in Liechtenstein is divided into the state level and the communal level. The 11 political communes maintain a high level of autonomy. The autonomy of the communes is an important feature of the political structure of Liechtenstein. The Constitution establishes the scope of autonomy for the 11 communes. The citizens in each commune elect a Council, headed by a chairperson who functions on a full- or part-time basis, depending on the size of the commune. The communal authorities are independent as regards the conduct of their business and are responsible for the administration of their own budgets. Citizens can appeal the decisions of the communes by means of a referendum.

IV. Economic and political integration

Liechtenstein pursues an active foreign policy through which it has sought mainly to strengthen its sovereignty and to achieve improved political and economical integration at the European and international levels. The process of industrialization and economic growth began in the 1960s and still continues today has made it possible gradually to achieve such integration.

In 1960 Liechtenstein joined the European Free Trade Association through its customs union with Switzerland, and later became a full member in 1991. In 1975, it became a member of the Organization for Security and Co-operation in Europe, and in 1978, a member of the Council of Europe. Liechtenstein subsequently joined the United Nations in 1990 and the World Trade Organization in 1995. Also in 1995 Liechtenstein became a state party to the treaty establishing the European Economic Area (EEA).

Liechtenstein currently maintains diplomatic missions to the United Nations in New York, Geneva and Vienna, as well as to the European Union in Brussels and to the European Free Trade Association and the World Trade Organization in Geneva. Liechtenstein also maintains a Permanent Representation to the Council of Europe in Strasbourg and a Permanent Mission to the Organization for Security and Cooperation in Europe in Vienna.

At diplomatic level Liechtenstein is represented in Berne, Vienna, Berlin, the Holy Seat, Brussels and Washington.

V. Economy

A. Economic integration in Europe

Liechtenstein and Switzerland have constituted a common economic area (economic and monetary union) since 1924, when the customs union between the two countries entered into force. The border between the two States is open, while the border with Austria is secured by Swiss customs officials. The Currency Treaty with Switzerland establishes the Swiss franc as the legal tender in Liechtenstein. Since 1 May 1995 Liechtenstein has belonged to the European Economic Area. The EEA currently includes 18 States, including the three EFTA States Iceland, Liechtenstein and Norway, as well as the 15 EU States. The purpose of the EEA is the creation of a pan-European free market on the basis of the so-called four freedoms (free movement of goods, services, capital and persons) and EU competition law. Direct and indirect taxes are not subject to the EEA Agreement.

B. Structure of the economy

Liechtenstein is a modern industrialized and service-oriented State with ties to countries all over the world. It owes its economic success over the recent decades to favourable overall conditions created by a liberal economic legislative framework. Liechtenstein also has a highly productive, globally oriented industrial sector which accounts for more than 40 per cent of the gross national product, as well as well-developed service enterprises, especially in the financial sector, with legal services, trust companies, and

banks. The country enjoys a worldwide reputation as a modern financial center with first-class know-how. The service enterprises account for 54 per cent of the gross national product (1999). This broad range of diversification has been and continues to be a key factor in the steady growth of the economy of Liechtenstein and its ability to avoid recessional tendencies.

C. Structure of employment

Because of Liechtenstein's small size and the prevailing positive trends in its economy, a large proportion of the labour force is recruited from neighbouring countries, with workers commuting across the national border. As of December 2001, there were 17'011 economically active residents of Liechtenstein, which figure represented 50.7 per cent of all inhabitants. 15'875 of which were employed in Liechtenstein and 1'136 abroad. In addition to the 15'875 people employed in Liechtenstein, there were 12'908 others who were commuting on a daily basis from the neighbouring countries. At that time, Liechtenstein thus provided work for 28'783 people.

Agriculture is no longer of major significance for the national economy. However, the primary sector is still an important one with respect to food self-sufficiency in times of crisis and the care and preservation of the natural and cultural landscape. In December 2001, 1.3 per cent of the labour force resident in Liechtenstein was still employed in the primary sector. Although the service sector in Liechtenstein (trade, financial services, tourism, education, etc.) has been expanding steadily, and accounted for 53.5 per cent of all fully-employed persons in December 2001, the country still maintains an active and diversified secondary sector (industry, crafts, construction, etc.), which accounted for 45.2 per cent of all fully-employed persons during the same period.

In 2001 Liechtenstein had no external indebtedness.

D. Unemployment rate

Unemployment is low by international standards, and rarely exceeds the 2 per cent mark. The unemployment rate in late 2001 stood at 1.1 per cent.

E. Inflation rate

On the basis of the economic and monetary union of Liechtenstein with Switzerland, inflation is expressed in terms of the Swiss National Consumer Price Index. In 2001 the inflation rate in Liechtenstein was 1 per cent.

IV. General legal framework within which human rights are protected

A. Fundamental rights and freedoms

The Constitution of the Principality of Liechtenstein contains a catalogue of fundamental rights, specifically the right to freedom of residence and the right to own property (art. 28), personal freedom, domestic authority, privacy protection as regards correspondence and written communications (art. 32), the right to due process before a duly appointed judge (art. 33), the inviolability of private property (art. 34), freedom of

trade (art. 36), freedom of belief and conscience (art. 37), the right of free expression and freedom of the press (art. 40), the right to freedom of association and assembly (art. 41), the right to petition and the right of appeal (art. 42).

The Constitution also guarantees equality before the law for all citizens and stipulates that the rights of foreigners shall be determined by international treaties, in the first instance, or, in the absence of such, on the basis of reciprocity.

B. National and international jurisdiction

Everyone who believes that his or her fundamental rights and freedoms have been violated is entitled to apply to the courts or to file a complaint on the matter. Relief may take the form, inter alia, of an order to set aside an administrative or government decision, or an order for the payment of compensatory, nominal or substantial damages. It is the function of the Constitutional Court (Staatsgerichtshof) of Liechtenstein to rule on the constitutionality of existing laws and, where necessary, to render void laws or ordinances, or parts thereof. An appeal may also be lodged, in specific cases, with the European Court of Human Rights in Strasbourg, Liechtenstein having acceded, on 8 September 1982, to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. Such appeals are subject to the condition that all avenues of domestic remedies within Liechtenstein have been exhausted.

The Constitutional Court also has responsibility for ensuring compliance with the provisions of the European Convention on Human Rights.

C. Ratification and implementation of international human rights legislation

In addition to the International Covenant on Civil and Political Rights, of 16 December 1966, Liechtenstein, as a member State of both, the United Nations and the Council of Europe, has ratified the following European and international instruments relating to the promotion and protection of human rights:

- The Charter of the United Nations of 26 June 1945;
- The Convention of 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967;
- The International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;
- The International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
- The Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966 and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty of 15 December 1989;
- The Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;
- The Convention on the Rights of the Child of 20 November 1989;

- The Statute of the Council of Europe of 5 May 1949;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, including various Protocols;
- The European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, including Protocols 1 and 2;
- The Framework Convention for the Protection of National Minorities of 1 February 1995 and the European Charter for Regional or Minority Languages, of 5 November 1992;
- The European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights of 5 March 1996;
- The Statute of the International Criminal Court (ICC) of 17 July 1998.

D. Incorporation of international human rights instruments into national law

With regard to the implementation of international human rights treaties, Liechtenstein subscribes to the principle that treaty obligations should be entered into only when internal compliance is guaranteed. An international treaty ratified by the Government of Liechtenstein (with the authorization of the Parliament or the people in most cases) becomes a part of national law from the time of its entry into force for Liechtenstein. Where the provisions of the treaty are sufficiently specific, no implementing law is necessary.

V. Information and Publicity

All laws and regulations, including international agreements, are discussed in the Diet and must be published in the *National Law Gazette (Landesgesetzblatt–LGBL.)* of Liechtenstein upon their entry into force. The newspapers also publish reports on the entry into force of such instruments, the texts of which may be obtained from the Government Administrative Office. The public therefore has access to all legal instruments. As regards international human rights instruments, once these are approved by the Parliament, the public is informed by the Government upon their entry into force, and thereafter as required. In addition, reports on the implementation of international human rights instruments in Liechtenstein may be consulted on the official internet website of the Government.

PART 2: IMPLEMENTATION OF THE COVENANT IN LIECHTENSTEIN

Article 1

Paragraph 1

The right to self-determination holds a prominent position in the Constitution of Liechtenstein. Article 1 paragraph 1 of the Constitution stipulates that the Principality of Liechtenstein is based upon the principle of enabling the people residing within its borders to live in peace and freedom. Pursuant to Article 4 paragraph 2 of the Constitution individual communes have the right to secede from the State. A decision to initiate the secession procedure shall be taken by a majority of the citizens residing there who are entitled to vote. Secession shall be regulated by a law or, as the case may be, a treaty. In the latter event, a second ballot shall be held in the commune after the negotiations have been completed.

As indicated under chapter III.G in the general part of this report, the autonomy of the municipalities in Liechtenstein is, at the same time, relatively strongly developed. This is also manifested in the fact that Liechtenstein is a State Party to the 1985 European Charter of Local Self-Government (LGBI. 1988 No. 21).

Paragraph 2

The existence and the share of natural resources in the economic activity of Liechtenstein is limited. The Liechtenstein economy is primarily based on export-oriented industry and services. Conscious of the economic interdependence of nations, Liechtenstein advocates for a balanced world trade system in the framework of its membership of international organizations such as the WTO.

Article 36 of the Constitution guarantees freedom of trade and enterprise for private persons and therefore also the use of natural resources. Limitations on this freedom require regulation through legislation. The State maintains a monopoly only with regard to the sale of salt, as laid down in the Salt Monopoly Act of 12 September 1990 (LGBI. 1990 No. 64). An exception to this monopoly applies, however, to the sale of salt originating in the Contracting Parties of the European Economic Area.

Paragraph 3

Since 1993, Liechtenstein has advocated within the framework of the United Nations for the revival of the right of self-determination of peoples and for the introduction of new areas and forms of application of this right on the basis of established international legal principles. A flexible development of the right of self-determination would lead to the defusing of internal conflicts between population groups and would prevent an escalation of such conflicts. For this purpose, a research institute has been established at

the Woodrow Wilson School of Public and International Affairs at Princeton University, focusing on research, education, publishing, and holding conferences and other events on practical and theoretical aspects and consequences of autonomy movements and self-determination. With this initiative of H.S.H. Prince Hans-Adam II of Liechtenstein, Liechtenstein supports the international efforts to promote the realization of the right of self-determination in line with article 1 paragraph 3.

Article 2

Paragraph 1

Article 31 of the Liechtenstein Constitution guarantees the principle of equal treatment of all citizens; the rights of foreign citizens are determined by international treaties and on the basis of reciprocity. The international treaties (conventions) to which Liechtenstein is a State Party that are relevant to this provision include *inter alia* the International Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights, the European Convention on Human Rights (ECHR), the 1979 Convention on the Elimination of All Forms of Discrimination against Woman, and the 1965 Convention on the Elimination of All Forms of Racial Discrimination. All of these international legal instruments have at least the force of statutory law in Liechtenstein and are a direct part of the Liechtenstein legal order due to Liechtenstein's monist legal system. In this way, the validity of the rights in these conventions and the Covenant is guaranteed without distinction for all persons on Liechtenstein territory, subject to the reservations made to certain provisions.

A differential treatment of Liechtenstein and foreign citizens exists, however, in those cases where the relationship between citizen and State plays a special role. This is true in particular for the right to vote, but also for the right to enter certain professions and to access certain State support funds (cf. commentary on the reservation to article 26 of the Covenant).

With regard to the constitutionally enshrined equal rights of men and women (article 32 paragraph 2 LV) and the legislative implementation thereof, the first country report of Liechtenstein on the implementation of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (LGBI. 1996 No. 164) provides the relevant information (cf. commentary on article 3 of the Covenant).

The constitutional review jurisdiction of the Constitutional Court, which verifies the constitutional compatibility of all laws through abstract or concrete judicial review, ensures that the principle of equality in the Liechtenstein Constitution cannot be limited through legislation.

Paragraphs 2 and 3

Due to Liechtenstein's monist system, international legal obligations that are formulated in a sufficiently precise and concrete manner and are therefore self-executing are directly applicable in Liechtenstein. In order to clearly regulate domestic review of the guarantees of the Covenant in the last instance, the Constitutional Court Act was amended upon Liechtenstein's accession to the Covenant and its Additional Protocol recognizing the right of individual complaint; the amendment allows individuals to file complaints with the Constitutional Court with regard to violations of rights guaranteed by the Covenant against decisions or orders of courts or administrative authorities (LGBI. 1999 No. 46). In such cases, the Constitutional Court has the competence to void the decision or even to order a modification of the legal basis pursuant to which the decision was made. This procedure corresponds to the procedure chosen to implement article 13 of the European Convention on Human Rights.

Article 3

Since 26 January 1996, Liechtenstein has been a State Party to the 1979 Convention on the Elimination of All Forms of Discrimination against Women. Liechtenstein's first country report on the implementation of this Convention was considered by the Committee on the Elimination of Discrimination against Women at its 410th, 411th, and 414th meetings on 25 and 27 January 1999. Most of the information concerning the implementation of article 3 of the Covenant may be found in the country report (CEDAW/C/LIE/1) and the minutes of the meetings of the Committee (CEDAW/C/SR.410, 411, and 414). In addition, the second country report was submitted to the Committee on 29 June 2001, which contains information on further measures taken to implement the Convention (CEDAW/C/LIE/2).

In order to sensitize the public to questions of gender equality, the Government established an award of recognition in 1999 which aims to: motivate businesses to create working conditions appropriate for women and families; reward private initiatives leading to an improvement of the situation of women and to greater equal opportunity; honor individuals who are involved with themes relevant to gender equality in a personal or scientific capacity; and document the active engagement of the Government for gender equality. The call for entries for the award of recognition is directed to Liechtenstein businesses of all sizes, to public institutions and private organizations, and to individuals. The award was given to a project for improved integration of immigrant women in 2000 and to a project for the promotion of young entrepreneurs and entrepreneurial women in 2001. In both cases, the award was given to non-profit, non-governmental women's organizations.

Liechtenstein deposited a declaration concerning article 3 of the Covenant as follows:

“The Principality of Liechtenstein declares that it does not interpret the provisions of article 3 of the Covenant as constituting an impediment to the constitutional rules on the hereditary succession to the throne of the Reigning Prince.”

The reason for this declaration lies in the constitutional provision specifying that the hereditary succession to the throne of the Reigning Prince is determined by the laws of the Princely House (article 3 LV). These laws do not provide for female hereditary succession.

On 24 October 2001, Liechtenstein ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. As with the Additional Protocol to the Covenant on Civil and Political Rights, the recognition of the right of individual complaint under this Convention creates the possibility of reviewing alleged violations of the provisions of the Convention. The recognition of this complaint procedure therefore also contributes to the implementation of article 3 of the Covenant.

Article 4

Paragraph 1

Article 10 of the Liechtenstein Constitution accords the Reigning Prince as Head of State the right and the duty in urgent cases to take the necessary measures to ensure the security and welfare of the State. Emergency decrees may not set aside the Constitution as a whole or individual provisions of it but may only limit the applicability of individual provisions. Exception to this are those rights which may never be limited by emergency decrees (see comment under paragraph 2). Emergency decrees shall cease to apply six months after they have been issued.

In the past, the Reigning Prince has made use of his constitutional emergency powers on only three occasions, giving rise neither to conflicts of authority nor to concerns regarding the proportionality of his actions. In the first case, the Reigning Prince extended the legislative term of the Parliament by means of an emergency decree, in order to prevent the neighboring Third Reich from exerting National Socialist influence on the election campaign. In the two cases of 1982 and 1990, the emergency decrees filled legislative gaps. Due to the urgency, a consideration by the Parliament with a subsequent deadline for a referendum was not opportune. In addition, article 15 of the ECHR is applicable to Liechtenstein as a State Party.

Paragraph 2

The rights mentioned in article 4 of the Covenant are also neither voided by the emergency powers of the Reigning Prince mentioned above nor undermined with regard to their basic content. Article 10 paragraph 2 of the Constitution stipulates that emergency decrees can neither limit every person's right to life or the prohibition of torture and inhuman treatment or the prohibition of slavery and forced labour nor place any restriction on the "no punishment without law" principle.

Liechtenstein law does not provide for the death penalty. With the entry into force of the new Penal Code (Strafgesetzbuch, StGB) in 1988, the death penalty previously provided for therein was abolished. Upon accession to the Covenant, Liechtenstein simultaneously acceded to its Second Additional Protocol of 15 December 1989 on abolition of the death penalty. Moreover, Liechtenstein is a State Party to Protocol No. 6 to the ECHR on the abolition of the death penalty in peacetime, and Liechtenstein ratified Protocol No. 13 to the ECHR on 5 December 2002, which provides for the complete abolition of the death penalty, i.e., also in time of war. Protection from the death penalty is therefore subject to the monitoring mechanism of the European Court of Human Rights.

Article 5

Paragraph 1

This provision is also directly applicable in Liechtenstein. It corresponds to the prohibition of abuse of law in the Liechtenstein legal order, governed by article 2 of the Liechtenstein Law of 20 January 1926 on Persons and Companies (Personen- und Gesellschaftsrecht, PGR), LGBl. 1926 No. 4. The jurisprudence of Liechtenstein courts takes this principle into account.

Paragraph 2

As mentioned above, international treaties attain at least the force of statutory law. The validity clause contained in this paragraph is directly applicable in Liechtenstein. No superior constitutional provision contradicts it.

Article 6

Paragraph 1

The Liechtenstein Constitution contains no special provision regarding the right to life. Since the entry into force of the ECHR in Liechtenstein in 1982, the right to life is explicitly enshrined in the Liechtenstein legal order in an affirmative manner (article 2 ECHR). The protection of this right from attacks by private persons is ensured through prohibitions under criminal law in the Liechtenstein Penal Code (Strafgesetzbuch, StGB), LGBl. 1988 No. 37. These prohibitions include in particular murder (§ 75 StGB), manslaughter (§ 76 StGB), contract killing (§ 77 StGB), assisted suicide (§ 78 StGB), and killing of a child at birth (§ 79 StGB).

In the provisions of the Penal Code concerning the limitations on this right in cases of self-defense, the principle of proportionality plays an important role. § 3 of the Penal Code states that a person is not acting unlawfully if engaged in self-defense necessary to repulse a present or immediately imminent attack on the life, health, bodily integrity,

liberty, or assets of the person or a third party. The act is not justifiable, however, if it is obvious that the harm to the attacked person would be minor and the defense is inappropriate, especially in view of the strength of the intervention necessary to repulse the attacker.

The use of firearms by civil police is governed by the Police Act (LGBI. 1989 No. 48) and the National Administration Act (LGBI. 1922 No. 24). The Police Act specifies that the National Police may only use firearms as a last resort (article 28 paragraph 1). The situations in which firearms may be lawfully used are exhaustively enumerated (article 29). Use of a firearm by the police is lawful if:

- a) the police or a third party are attacked in a dangerous manner or are directly threatened with a dangerous attack;
- b) persons who have committed a crime or who are strongly suspected of having committed a crime attempt to evade arrest by escaping;
- c) the police must assume, on the basis of reliable findings, that persons constitute an immediately imminent, serious danger to the life and limb of others and that they are attempting to evade arrest by escaping;
- d) the freeing of hostages necessitates it;
- e) an immediately imminent serious crime against installations, damage to which would result in a particular danger to the public, can be prevented.

The extension of the right of self-defense to the police is therefore also subject to the principle of proportionality. In all of these cases, the use of weapons must furthermore be threatened unambiguously if this is not precluded by the circumstances. The Police Act finally also requires police officers to render assistance to a person injured through their intervention.

There are no legislative provisions concerning the use of arms by military personnel, since Liechtenstein does not have armed forces.

Paragraphs 2 - 6

As mentioned above, the death penalty was abolished in Liechtenstein upon entry into force of the revised Penal Code on 1 January 1989. Moreover, Liechtenstein has ratified Protocol No. 6 of the ECHR on the abolition of the death penalty and has also accepted the Second Additional Protocol to the Covenant.

Liechtenstein has been a State Party to the Convention on the Prevention and Punishment of Genocide since 22 June 1994.

Article 7

The protection of the individual against torture is guaranteed in Liechtenstein by means of a number of legal enactments at different levels:

Article 32 paragraph 1 of the Constitution guarantees the liberty of the person and therefore the protection of physical and mental integrity.

Since 2 December 1990, Liechtenstein has also been a State Party to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (LGBI. 1991 No. 59). The Committee against Torture considered the first report of Liechtenstein on the implementation of this Convention (CAT/C/12/Add.4) on 10 November 1994 (CAT/C/SR.195 and 196) and the second report (CAT/C/29/Add.5) on 10 May and 11 May 1999 (CAT/C/SR.384 and 387), which provide further information on this topic.

Furthermore, article 3 of the directly applicable ECHR prohibits torture and inhuman or degrading punishment or treatment.

Finally, Liechtenstein has been a State Party since 12 September 1991 to the European Convention of 26 November 1987 on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (LGBI. 1992 No. 7). The Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which was established to monitor this Convention, visited Liechtenstein for the first time from 14 to 16 April 1993, followed by a second visit from 31 May to 2 June 1999. Relevant in this regard is the report of the Committee of 9 December 1999 (CPR (99) 49).

Punishment under criminal law of acts of torture by officials is governed by § 312 StGB, according to which the tormenting or neglect of a prisoner is punished with imprisonment of up to ten years. Even in cases involving persons not acting in an official capacity, § 92 StGB criminalizes the tormenting or neglect of persons in a dependency relationship to the perpetrator.

Article 109bis of the Constitution is of note with regard to compensation of victims of torture. The State is liable for harm suffered by third parties due to acts of public authorities. The State Liability Act of 22 September 1966 (LGBI. 1966 No. 24) governs the details.

In the context of its commitment to the international fight against torture, Liechtenstein supports the United Nations Trust Fund for Victims of Torture and the World Organization Against Torture with annual financial contributions.

Particular aspects:

Extradition

On the basis of article 19 of the Law of 15 September 2000 on Mutual Legal Assistance in Criminal Matters (Mutual Legal Assistance Act, Rechtshilfegesetz, RHG), LGBI.

2000 No. 215, a request for extradition shall not be granted if the criminal proceedings or enforcement of judgments in the requesting State do not comply with the principles of article 3 and 6 of the ECHR, or if the person to be extradited would be exposed to persecution in the requesting State on the basis of origin, race, religion, membership in a particular ethnic or social group, nationality, or political opinion, or if the person would have to fear other harm.

Asylum procedure

Liechtenstein is a State Party to the Convention of 28 July 1951 relating to the Status of Refugees and is therefore bound by the principle of non-refoulement in article 33 of the Convention. This principle is also explicitly enshrined in the Liechtenstein Law of 2 April 1998 on the Acceptance of Asylum Seekers and Persons in Need of Protection (Refugee Act), LGBl. 1998 No. 107.

Paragraph 2

Protection from medical or scientific experiments without consent of the patient is guaranteed by the provisions in the Penal Code and in the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB). While the Penal Code (Strafgesetzbuch, StGB) criminalizes unauthorized medical care (§ 110 StGB), Chapter Four of the General Civil Code requires consent of the legal representative of persons unable to give consent.

Article 8

Article 32 paragraph 1 of the Liechtenstein Constitution guarantees personal liberty and protects individuals from slavery. Protection from slavery is also guaranteed by article 4 paragraph 1 of the ECHR. Criminal prosecution of such practices is ensured in Liechtenstein through various legal provisions: § 104 StGB provides for imprisonment of 10 to 20 years for persons who engage in the slave trade, bring about the enslavement of another person or a situation resembling enslavement, or cause a person to enter enslavement or a situation resembling enslavement. Further relevant provisions are to be found under § 99 StGB concerning deprivation of liberty.

The problem of trade in women and children for the purpose of sexual exploitation is addressed specifically in § 217 StGB concerning trafficking in persons. The Government has issued guidelines concerning the licensing of foreign dancers, bartenders, and musicians. In order to strengthen the protection of these persons, the guidelines stipulate in particular, on the basis of the relevant legal provisions, that an application for a working permit must be accompanied by an employment contract signed by both parties, ensuring a minimum salary and governing the purpose of the employment (function, services), the legally provided maximum working hours, resting periods, and the probationary period. Supplementary employment and moonlighting, such as prostitution, hostessing, and mandatory alcohol consumption are prohibited.

Granting of approval furthermore requires appropriate lodging that complies with construction, fire, and health regulation requirements.

The fight against sex tourism is supported by the amendment to § 64 StGB which entered into force on 1 February 2001, enabling the punishment of sexual acts against children even if the acts are committed abroad.

In solidarity with the international efforts against sexual exploitation of children, Liechtenstein signed the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography on 8 September 2000. In addition, Liechtenstein signed the Protocol on the Prevention, Suppression, and Punishment of Trafficking in Persons, especially Women and Children, on 14 March 2001. The Government intends to ratify these international legal instruments in the near future.

The prohibition of forced and mandatory labor in Liechtenstein is already ensured by article 4 paragraph 3 of the ECHR. According to the provisions of the Unemployment Insurance Act (LGBI. 1969 No. 41), persons who receive unemployment benefits are required to comply with the instructions of the Employment Office regarding the acceptance of reasonable work and regarding enrollment in retraining programs or continuing education, and they are required to search for employment themselves. "Reasonable work" is defined in the Unemployment Insurance Act; it must be work that *inter alia* fulfills the conditions usual for the type and location of the work, complies with health regulations, and corresponds to the previous activity or abilities of the unemployed person.

Article 9

Paragraph 1

The right to personal liberty and security is guaranteed by article 32 paragraph 1 of the Liechtenstein Constitution. As interpreted through the jurisprudence of the Constitutional Court, this constitutional provision encompasses not only the protection of bodily integrity, but also free personal development in terms of mental integrity. Paragraph 2 of this constitutional provision specifies that no one may be arrested or held in custody other than in the cases and in the manner determined by law. This fundamental provision is complemented by article 5 of the ECHR.

Preconditions for custody or restriction of personal liberty:

Custody pursuant to criminal proceedings

Imposing pretrial detention on a suspect is linked to preconditions governed by the Code of Criminal Procedure (Strafprozessordnung, StPO), LGBI. 1988 No. 62, especially § 131. These preconditions include the danger of absconding, collusion, repetition, and perpetration. The individual procedural guarantees are listed below under paragraphs 2 to 4.

Custody pending extradition

The procedure concerning custody pending extradition is governed by the Mutual Legal Assistance Act. Article 29 provides that custody pending extradition may only be imposed if there are sufficient grounds to believe that a person arrested in Liechtenstein has committed a crime subject to extradition. The provisions concerning pretrial detention are to be applied *mutatis mutandis* (see below). The duration of custody pending extradition may not exceed six months. The Court of Appeal may, however, on request of the Court of Justice or the Office of the Public Prosecutor, extend the duration of custody to a maximum of one year, due to particular difficulties or the particular scope of the proceedings. In the context of the judicial decision concerning imposition of custody, the person to be extradited must be informed of the charges and is entitled to counsel and to be instructed on the rights of appeal. These rights include the possibility of obtaining an open hearing before the Court of Appeal as the second instance. The procedural guarantees in paragraphs 1 to 4 of this article of the Covenant are therefore also ensured in extradition proceedings.

Custody pending deportation

Article 13(a) of the Swiss Federal Law on the Temporary and Permanent Residence of Foreign Nationals (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer, ANAG), which is valid in Liechtenstein pursuant to immigration authority agreements, punishes foreigners illegally residing in Switzerland with imprisonment of up to three months, but only under certain circumstances. Relevant jurisdiction in Liechtenstein is governed by the Regulation of 18 March 1996 on Preparatory Detention and Detention Pending Deportation (LGBl. 1996 No. 46). Custody pending deportation is excluded in the case of persons under the age of 15. The lawfulness and appropriateness of the custody must be verified by the Court of Justice in an oral hearing within 96 hours. The detained person may appeal the decision of the Court of Justice to the Court of Appeal. The detained person may also file a request for release one month after verification of custody; the president of the Court of Appeal must decide on such a request within 8 days. The provisions of the Code of Criminal Procedure apply to the proceedings in a complementary manner. The procedural guarantees in paragraphs 1 to 4 of article 9 of the Covenant therefore also apply to deportation proceedings.

Psychiatric confinement of persons with mental illness or disorders, illness due to addiction, and seriously neglected persons

The conditions and the procedure for admission to a psychiatric clinic or similar institution are regulated by the Social Welfare Act (LGBl. 1985 No. 17). According to article 11(a), this measure is to be taken as a last resort. The Court of Justice decides on confinement on application of the National Physician, the Office of Social Affairs, or the Welfare Commission of the applicable municipality; the affected individual must be heard in person. Confinement may be ordered for at most one year. The confinement procedure must also be accompanied by an expert assessment. The person requiring help must be released as soon as the person's condition allows. In practice, persons requiring help in Liechtenstein are admitted to a clinic in neighboring Switzerland, since Liechtenstein has no closed clinics. The care of the patient is then subject to the provisions applicable in Switzerland.

Paragraph 2

If a person suspected of committing a criminal offense is questioned by the police, the police must let the suspect confirm by signature upon completion of the questioning that he or she has been notified that the protocol will be forwarded to the Office of the Public Prosecutor. If the Public Prosecutor determines, upon evaluation of the report or the records of any inquiries undertaken, that there are sufficient grounds for a prosecution, the Public Prosecutor submits an application to initiate the investigation. § 22 of the Code of Criminal Procedure requires that persons who have already been questioned as suspects as well as any affected private persons shall be informed of the application to initiate the investigation. Once an indictment has been issued or an application to initiate an investigation has been submitted, the suspect is considered an accused person. If no other legal provisions apply, the accused person is first subpoenaed for questioning. If the person does not appear without sufficiently justified grounds, an order to bring the person before a judge is issued. According to § 128 of the Code of Criminal Procedure, the accused person is to be immediately presented with a written arrest warrant, including explanation, upon the person's arrest or else within 24 hours. § 148 of the Code of Criminal Procedure further requires that the examining magistrate shall generally indicate the criminal offense with which the person is charged before questioning commences.

Paragraph 3

The details of procedural guarantees included in this provision are covered in Chapter XI of the Code of Criminal Procedure (§§ 125 et seq., StPO). According to § 130 StPO, the examining magistrate must question within 24 hours every person delivered to the court or ordered by the examining magistrate to appear. Delays may not exceed a period of three days, and the reasons for such a delay must be put on record. The examining magistrate must immediately decide whether the accused person shall be released or confined to ordinary pretrial detention. According to § 138 StPO, all authorities involved in the criminal proceedings are required to work towards keeping the detention as short as possible. Preliminary custody and pretrial detention must be lifted as soon as the conditions therefor are no longer met. As a rule, pretrial detention imposed solely due to danger of collusion may not exceed two months; pretrial detention imposed for other reasons may not exceed six months. In case of special difficulties or due to the unusual scope of the investigation, the Court of Appeal may increase these maximum durations on application of the examining judge or the Public Prosecutor to three months or one year, respectively, or to two years in case of a grave felony.

Bail is governed by § 139 StPO. The Public Prosecutor and the examining judge jointly decide on the amount of bail; if they cannot agree, the President of the Court of Appeal decides. Once the decision is made, the person is to be released on bail and with a solemn declaration.

Paragraph 4

Applications for release may be submitted according to § 139 paragraph 1 StPO. § 139 paragraph 2 StPO specifies that complaints against the imposition of pretrial detention must be decided upon without delay at a remand hearing. If the accused person does not submit an application, a remand hearing must be conducted *ex officio* after at most two months of pretrial detention.

Paragraph 5

Claims for compensation in case of arbitrary arrest are guaranteed by article 32 paragraph 3 of the Constitution. Unlawfully arrested persons and persons arrested or sentenced who are proven to be innocent are thereby entitled to full compensation by the State as determined by the court. This constitutional provision is supplemented by article 14 of the State Liability Act (LGBl. 1966 No. 24).

Article 10**Paragraph 1**

§ 133 StPO provides that pretrial detention or temporary custody of an accused person must be undertaken in a way to ensure the most careful possible treatment of the person and preservation of the person's honor. According to article 8 of the Treatment of Offenders Act (LGBl. 1983 No. 53), the human dignity of prisoners must be respected and protected. In this context, the first country report of Liechtenstein on implementation of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT/C/12/Add.4) is also relevant.

Paragraph 2

According to § 133 paragraph 2 StPO, persons held in pretrial detention may not be detained jointly with convicts. § 133 paragraph 1 StPO also provides that prisoners (held in pretrial detention) may only be subject to those constraints necessary to prevent escape and arrangements detrimental to the investigation.

§ 19 paragraph 2 of the Juvenile Court Act (LGBl. 1988 No. 39) provides that minors held in pretrial detention must be kept separate from adult prisoners. § 17 also requires that juvenile criminal matters take precedence over other criminal jurisdiction cases and shall be dealt with in an accelerated manner.

Paragraph 3

According to article 8 paragraph 1 of the Treatment of Offenders Act, the enforcement of sentences must aim at helping prisoners reintegrate into life in freedom. § 1 paragraph 1 of the Juvenile Court Act makes clear that the administration of juvenile justice is

classified both as administration of justice and as a measure aimed at the welfare, protection, and aid of young people.

According to § 33 paragraph 1 of the Juvenile Court Act, juvenile offenders are to be imprisoned separately from adult convicts. Joint imprisonment of juvenile and adult prisoners is also prohibited by the Convention on the Rights of the Child, to which Liechtenstein is a party.

Liechtenstein has concluded a treaty with the Republic of Austria on the imprisonment of convicts. According to the provisions of this treaty, Austria grants legal assistance to Liechtenstein upon request by imprisoning persons who are to be held in custody pursuant to an order of a Liechtenstein court (article 1). Decisions concerning the duration of imprisonment are the prerogative of Liechtenstein authorities. Imprisonment is otherwise governed by Austrian law (article 6). Similar cooperation exists between Liechtenstein and individual cantons of Switzerland. In practice, before imprisoning a juvenile offender in a foreign juvenile detention facility, the appropriateness of the facility is evaluated in each individual case with regard to educational possibilities and family contacts. This evaluation is undertaken in conjunction with the Children and Youth Division of the Office of Social Affairs.

Article 11

This provision was incorporated into the Liechtenstein legal order upon accession to the Covenant and is directly applicable. As mentioned in the discussion of article 9, article 32 paragraph 2 of the Constitution also enumerates the conditions under which the fundamental right to personal freedom according to article 32 paragraph 1 of the Constitution may be curtailed: legal basis, public interest, proportionality. These conditions exclude detention for non-fulfillment of contractual obligations. There is therefore no legal enactment in Liechtenstein legitimizing such detention.

Article 12

Paragraphs 1 and 2

The right to free choice of residence and the right to freedom of movement within the country are guaranteed for Liechtenstein citizens by article 28 of the Constitution. According to immigration provisions, freedom of movement and residence in Liechtenstein also applies to foreign citizens with a valid seasonal work permit, temporary residence permit, or permanent residence permit. Freedom of movement and residence for asylum seekers and persons in need of protection is governed by the Refugee Act (LGBI. 1998 No. 107). In general, asylum seekers are housed in asylum centers until the final decision on their asylum application. If the asylum centers are full, asylum seekers and persons in need of protection are assigned to housing in the municipalities; the legitimate interests of the municipalities and of the applicants and the

principle of family unity must be taken into account (article 31). According to article 66 of the Refugee Act, the housing of persons in need of protection is governed in an analogous manner. For the duration of the asylum process, asylum seekers must remain available to the authorities and promptly notify the authorities of their address and address changes (article 11). The right to move freely within the country is, however, guaranteed.

Paragraph 3

The provisions concerning the right to leave the country are directly applicable. There are no legal restrictions on this right in Liechtenstein. The right to leave Liechtenstein is further manifested in the provisions of the Citizenship Documents Act (LGBL 1986 No. 27). According to article 17 of the Citizenship Documents Act, Liechtenstein citizens have the right to a passport.

Paragraph 4

The right of Liechtenstein citizens to enter the country is guaranteed by article 28 paragraph 1 of the Constitution. Article 4 of the Citizenship Documents Act also states that the certificate of citizenship, with which municipal citizenship and national citizenship are certified, confirms the right of the bearer to return to Liechtenstein and take up residence at any time. In addition, article 30 of the Constitution states that the acquisition and forfeiture of citizenship shall be determined by law, thereby excluding the possibility of arbitrary denial of the right to enter the country. The required legal provisions can be found in the Law on Acquisition and Forfeiture of Liechtenstein Citizenship (LGBL 1960 No. 23).

Article 13

The Swiss Federal Law on the Temporary and Permanent Residence of Foreign Nationals (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer, ANAG), which is also valid in Liechtenstein pursuant to immigration agreements with Switzerland, differentiates between deportation of foreign citizens in accordance with article 10 and rejection pursuant to a negative decision on an application for a residence permit. Rejection requires foreign citizens to leave the country if their application for a residence permit or for extension was rejected in accordance with article 12 ANAG.

According to article 10 ANAG, deportation of a foreign citizen with a temporary residence permit or a permanent residence permit is only permissible if:

- the foreign citizen was convicted of a criminal offense;
- the foreign citizen's behavior in general and his or her acts lead to the conclusion that he or she is unwilling or unable to adapt to the accepted order;
- the foreign citizen constitutes a danger to public order due to mental illness;

- the foreign citizen or a person under the foreign citizen's care is a substantial burden to social welfare.

In each case, however, decisions on deportation must be made in accordance with proportionality. The Liechtenstein Regulation on the Movement of Persons (LGBI. 2000 No. 99) is of particular relevance in this regard. Article 90 provides that deportation may be permissible for the protection of public order, security, and health. Articles 92 and 93 specify, however, that a criminal conviction alone or illness arising only after the granting of the residence permit are not sufficient to justify deportation. In every individual decision on deportation, the relevant legally protected interests must be balanced. According to article 5 of the Regulation on the Movement of Persons, moreover, the international legal obligations of Liechtenstein in this regard must be respected.

The right of appeal against decisions of the competent authority concerning deportation and rejection as well as the applicable rules of procedure are guaranteed by articles 14 and 15 of the Law on the Procedure for Granting Residence Permits (LGBI. 2000 No. 98). Orders of the competent authority may be appealed to the Government. Decisions of the Government may be challenged in the second instance before the Administrative Court. Decisions must be submitted to the affected person in writing, with justification and with indication of the right of appeal, in line with the relevant provisions of the National Administration Act (LGBI. 1922 No. 24).

Article 54 of the Refugee Act provides that refugees who have been granted asylum in Liechtenstein may only be deported if they endanger the internal or external security of Liechtenstein or have violated the public order in a grave manner. An order of the competent authority to this effect may be appealed to the Government and in the second instance to the Administrative Court.

Article 14

Paragraph 1

Equality before the law; guarantee of a lawful, impartial court

The principle of equality is enshrined in article 31 of the Constitution, as indicated in the discussion of article 2 of the Covenant. Article 33 paragraph 1 of the Constitution furthermore provides that no one may be deprived of a regular judge. Extraordinary courts may not be established. This constitutional provision thereby guarantees equality before the law in court proceedings and the right to consideration by a lawfully constituted court in cases of civil disputes and criminal proceedings. According to the jurisprudence of the Constitutional Court, this provision also contains the right to an independent and impartial court. The requirement of judicial impartiality is also explicitly enshrined in article 99 of the Constitution.

The same procedural guarantees are also required by article 6 paragraph 1 of the European Convention of Human Rights (ECHR).

Court system

The constitutional guarantee of a lawful court in accordance with article 33 of the Constitution mandates the legislative branch to create the legal foundations for the jurisdiction and composition of the courts. This mandate was fulfilled with respect to civil and criminal matters with the Judiciary Act (LGBl. 1922 No. 16), which, *inter alia*, enumerates the grounds – especially partiality – for exclusion of a judge. The number of courts and their jurisdiction are already exhaustively determined at the constitutional level (articles 97 to 106 LV): The Court of Justice has jurisdiction over civil and criminal matters in the first instance, the Court of Appeal in the second instance, and the Supreme Court in the last instance.

Reservation concerning public proceedings

As a rule, the Liechtenstein Code of Civil Procedure provides that hearings before the adjudicating court, including the judicial decision, shall be public. § 172 of the Code of Civil Procedure (Zivilprozessordnung, ZPO) enumerates the grounds for exclusion of the public. These correspond to the grounds for exclusion in article 14 paragraph 1 of the Covenant. In addition, however, there are further provisions concerning closed hearings and pronouncements of judgments which cannot unambiguously be justified according to the permissible grounds for exclusion (morals, public order, national security, private lives of the parties, interest of justice). § 413 ZPO provides, for instance, that a judgment on the basis of an oral hearing shall, if possible, be reached and pronounced immediately upon conclusion of the oral hearing; the pronouncement of the judgment is independent of the presence of both parties. If the judgment cannot be reached immediately upon conclusion of the oral hearing, it shall be reached within eight days of conclusion of the oral hearing, according to § 415 ZPO. There is then no special public pronouncement of the judgment. With regard to appellate and certiorari proceedings, § 443 ZPO and § 478 ZPO determine that appeals and certiorari are to be decided in non-public sessions without a prior oral hearing. According to § 494 ZPO, recourse decisions are also made in a non-public session without a prior oral hearing.

The Code of Criminal Procedure likewise does not apply the principle of public proceedings in all cases. According to § 237 StPO, the Supreme Court makes its decisions in criminal cases as a rule in non-public sessions and without oral hearings concerning certiorari. § 243 StPO further provides that the appellate court issues its decisions without prior oral hearings and delivers the decision to the complainant.

Liechtenstein administrative proceedings are in general not public, such as inquiry proceedings in accordance with the National Administration Act, proceedings before the National Land Property Commission in accordance with article 20 of the Land Property Act, and proceedings before the National Tax Commission (in accordance with article 24 of the Tax Act, LGBl. 1961 No. 7).

Although these provisions only restrict the right to public proceedings and pronouncements of judgments in Liechtenstein in particular cases, the following reservation has been made to article 14 paragraph 1 of the Covenant on Civil and Political Rights, based on the reservation to article 6 paragraph 1 of the ECHR:

“The Principality of Liechtenstein reserves the right to apply the provisions of article 14, paragraph 1 of the Covenant, concerning the principle that hearings must be held and judgments pronounced in public, only within the limits deriving from the principles at present embodied in the Liechtenstein legislation on legal proceedings”

Paragraph 2

The principle of presumption of innocence is also to be found in article 6 paragraph 2 of the ECHR and is therefore part of the Liechtenstein legal order. This principle is taken into account especially by the doctrine of Liechtenstein criminal procedure according to which the burden of proof is placed on the prosecution, not the defense.

Paragraph 3

Right to be informed of the charges

§ 165 paragraph 3 and § 166 paragraph 1 StPO determine that the accused person must be notified of or served with the indictment within 24 hours (if the person is already in custody) or simultaneously with the arrest warrant (if arrest is made pursuant to the indictment). At the same time, the accused person is informed of his or her right to a defense in accordance with § 24 StPO. If the accused person does not understand German, an interpreter shall be called in at the first questioning, according to § 145 in conjunction with § 116 and § 23 paragraph 3 StPO.

Right to time and facilities for preparation of the defense

The right of the accused person to a defense is guaranteed by article 33 paragraph 3 of the Constitution. §§ 23 et seq. of the Code of Criminal Procedure govern the specific rights of the accused person with regard to defense. In accordance with these provisions, accused persons may avail themselves of defense counsel in all criminal matters. In principle, it is also permissible to retain more than one defense counsel or to transfer the defense from the defense counsel designated by the accused person to another. According to § 30 StPO, the examining magistrate shall allow the defense counsel, upon request, to examine the case records on the court premises and to make copies thereof, with the exception of the minutes of the court’s deliberations. If the accused person is not represented by defense counsel, these rights of the defense counsel are assigned to the accused person; examination of the case records may also be granted to a person in custody on the prison premises. An accused person in custody has the right to consult with defense counsel in the absence of court personnel. An exception to this principle is custody due to danger of collusion; court personnel must then be present at consultations with defense counsel until the indictment has been issued. Written correspondence of the accused person in custody with defense counsel is only subject to

supervision by the examining judge until the indictment has been issued, and then only if the accused person is in custody solely or also due to danger of collusion.

Right to trial without undue delay

This provision is already applicable in Liechtenstein pursuant to article 6 paragraph 1 of the ECHR. The Liechtenstein Code of Criminal Procedure is tailored to this principle. No complaint has been filed to date with the European Court of Human Rights against Liechtenstein concerning undue length of trial.

Right to defense counsel

According to § 179 StPO, the accused person shall be summoned to the final hearing. §24 StPO provides that accused persons may avail themselves of defense counsel in all criminal matters. § 26 paragraph 1 of the Code of Criminal Procedure also provides that the accused person shall be informed of this right. If the accused person is unable to pay for defense costs, the court shall decide, upon the request of the accused person, to appoint defense counsel paid for by the State. At the final hearing before the Criminal Court or the Court of Lay Assessors, the appointment of counsel is required *ex officio* even without request of the accused person.

Right to question prosecution witnesses and to obtain the attendance of defense witnesses

According to § 179 StPO, parties may request the questioning of witnesses and experts. § 186 StPO provides that every person questioned during the final hearing may also *inter alia* be questioned by the accused person and the defense counsel, as long as the chairman does not reject the question as inappropriate.

Right to assistance of an interpreter

The Liechtenstein Code of Criminal Procedure grants an accused person the assistance of an interpreter free of charge for purposes of questioning (§ 145 in conjunction with § 116 and § 23 paragraph 3 StPO).

Right not to testify against oneself

According to § 193 paragraph 2 StPO, accused persons cannot be compelled to answer the questions addressed to them. This provision implies the prohibition of compelled self-accusation.

Paragraph 4

The Juvenile Court Act (LGBI. 1988 No. 39) guarantees that proceedings against juveniles shall be conducted in a different manner than proceedings against adults. Special procedural provisions (§§ 11 to 33) serve this purpose in particular. The following aspects are *inter alia* governed by these provisions: educational measures, accelerated conduct of juvenile proceedings, restriction of police intervention, limitation

of pretrial detention, exclusion of the public. Above all, the Juvenile Court Act provides that in particular the life and family conditions of the accused juvenile, the juvenile's development, and all circumstances that may serve to evaluate the juvenile's physical, mental, and emotional idiosyncrasies must be assessed and clarified.

Paragraph 5

Second-instance proceedings in criminal cases are ensued by §§ 218 et seq. StPO. § 218 paragraph 1 StPO states that appeal to the Court of Appeal is permissible against all judgments of the Criminal Court and the Court of Lay Assessors. Appeals suspend commencement of a sentence. In civil proceedings, the right of appeal is governed by § 431 et seq. ZPO. (For a description of the domestic stages of appeal in general, see the discussion in the general part of this report.)

Paragraph 6

Claims for compensation in cases of unlawful arrest and sentencing are guaranteed by article 32 paragraph 3 of the Liechtenstein Constitution in conjunction with article 14 of the State Liability Act (LGBI. 1966 No. 24). Article 32 paragraph 3 of the Liechtenstein Constitution provides that unlawfully arrested persons and persons arrested or sentenced who are proven to be innocent are entitled to full compensation by the State as determined by the court.

Paragraph 7

The principle of *ne bis in idem* is also part of the European Convention on Extradition of 13 December 1957 (LGBI. 1970 No. 29), to which Liechtenstein is a party. Articles 16 and 17 of the Liechtenstein Mutual Legal Assistance Act govern the jurisdiction of Liechtenstein courts and the jurisdiction of foreign courts; in this context, they provide that extradition is impermissible if the person to be extradited has already been lawfully sentenced or exonerated in Liechtenstein or has been lawfully sentenced by a court of a third State for the criminal offense and the sentence has been enforced. Paragraph 7 is also directly applicable.

Article 15

Paragraph 1

The criminal law principles *nullum crimen sine lege* and *nulla poena sine lege* are also enumerated in article 7 paragraph 1 of the ECHR. These principles are to be found in article 33 paragraph 2 of the Constitution and § 1 of the Penal Code (Strafgesetzbuch, StGB). § 1 StGB states that a punishment or preventive measure may only be imposed for offences that are subject to an explicit legal criminal sanction and that were already subject to criminal sanction at the time of commission. A more severe punishment than the criminal sanction applicable at the time of commission may not be imposed. § 61 StGB adds that penal provisions shall be applicable to offenses committed after their

entry into force. They shall be applied to offenses committed earlier if the provisions valid at the time of commission were not more favorable to the perpetrator in their overall effect. This entails the obligation to apply the more lenient law.

Paragraph 2

The content of this provision corresponds to article 7 paragraph 2 of the ECHR; these provisions have constituted a part of the Liechtenstein legal order since entry into force of the ECHR. Liechtenstein courts have so far rendered no judgments pursuant to this provision, either by itself or in conjunction with other provisions.

Article 16

Legal capacity is guaranteed by article 9 of the Law on Persons and Companies (LGBI. 1926 No. 4). This article explicitly states that every person has legal capacity, and that all natural persons therefore enjoy the same capacity to have rights and duties under private law, within the constraints of the legal order.

Article 17

Protection of privacy, family, home, and correspondence

Article 32 of the Constitution guarantees personal liberty, the immunity of the home, and the inviolability of letters and written matter. According to the Constitution, searches of houses or persons, letters, or written matter, and seizure of letters or written matter may only be undertaken in the particular cases and manner specified by law. The legal provisions concerning searches of houses and persons, letters, and written matter, as well as their seizure, are to be found in the Code of Criminal Procedure, the Police Act, and the Mutual Legal Assistance Act. They are all subject to the principle of proportionality. The Penal Code in turn makes the violation of the privacy of letters and telecommunications as well as the abuse of audio recording and listening devices a punishable offense.

§§ 92 et seq. of the Code of Criminal Procedure state that as a rule, searches of houses may only be undertaken pursuant to a judicial order which includes justification. For the purpose of administration of criminal justice, a house search may also be conducted by security organs on their own accord if a subpoena or arrest warrant has been issued or someone has been caught *in flagrante delicto*. In this case, the affected person must, upon the request of the person, immediately or within 24 hours be presented with a certification of the house search and the grounds therefor. As a rule, searches of houses and persons are to be conducted in the presence of the examining judge. In less serious cases, the examining judge may allow such investigative activities to be conducted by another court official, the head of a municipality, or another appropriate security organ. The owner of the premises to be searched must be called on to be present during the

search. If the owner is unable or absent, the request must be made to an adult member of the owner's family, or if no adult member is present, to a housemate or neighbor. Moreover, a record-keeper and two court witnesses must be present during the search. The record of the search must be signed by all parties present.

In order to ensure enhanced protection of victims, provisions have been incorporated into the Liechtenstein Police Act to expel perpetrators from abodes and deny access to abodes in cases of violence. If, on the basis of specific facts, in particular a prior dangerous attack against life, health, and liberty, it appears that a dangerous attack against life, health, or liberty is imminent, the National Police is authorized to expel the source of the danger from the abode of the person in danger and from the immediate surroundings, as well as to prohibit access to this area. If it becomes necessary for the affected person to visit the abode to which access is prohibited, the person may only do so in the presence of the police. The order prohibiting access to the abode must be verified by the Chief of the National Police within 72 hours. The Chief of Police must consult all institutions and offices that might contribute to the evaluation of the relevant facts. An order prohibiting access may be appealed to the Government. This appeal does not suspend validity of the order. The prohibition of access ends at the latest at the end of the tenth day after the order was issued, unless the person in danger applies for a temporary injunction to be issued by the court.

The Liechtenstein Data Protection Act, which entered into force on 1 August 2002 (LGBI. 2002 No. 55) further contributes to the protection of privacy. This law implements Directive 95/46/EC of 24 October 1995 into Liechtenstein law. It determines the principle according to which personal data resulting from the use of data entrusted or made accessible to a person for professional reasons are to be kept secret, to the extent that there exist no lawful grounds for the transmission of the data. According to the Data Protection Act, data entitled to particular protection include data concerning religious, ideological, and political views or activities, health, the private sphere or racial affiliation, measures relating to social welfare, and administrative or criminal prosecutions and punishments.

The right to family life primarily implies the freedom of all family members to live together. This right, as well as the various rights and duties of family members, are governed by the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB). State intervention in the rights of parents concerning their children (care, education, management of assets) is only permissible on the basis of law by means of an official order. Such an order, especially concerning the withdrawal or restriction of parental custody, requires the factual determination of endangerment of the child's welfare (§ 177 ABGB) and may only be applied to the extent necessary to safeguard the welfare of the child (§ 177 ABGB). If a measure in the interest of the child's welfare is urgently required, the court may, upon the request of the affected child, grant approval in the absence of the consent of the parents, if the interests of the parents are not unreasonably violated (§ 137a paragraph 2 ABGB).

The question of family reunification plays an important role in Liechtenstein immigration policy, in view of the extraordinarily high proportion of foreigners in the population (approx. 34%) and the small size of the country. Swiss citizens and citizens

of countries of the European Economic Area (EEA) with a temporary or permanent residence permit are given the opportunity to let their immediate families join them in Liechtenstein immediately, if they demonstrate proof of adequate housing and sufficient income. Students from these countries may let their dependent children join them. For persons from other countries, the following provisions apply:

- a) The employee must have been granted a regular, uninterrupted stay in Liechtenstein of four years or, instead of the seasonal worker's permit, an annual residence permit;
- b) the employee must have sufficient financial means to support the employee's family;
- c) the employee must demonstrate before entry into the country that adequate housing is available;
- d) the residence and employment situation of the employee must be considered sufficiently stable and long-term;
- e) customary supervision of the education of the children must be ensured, and the education of the children in the existing school and vocational training system must be possible.

Short-term residents and students from these countries may not let their families join them.

All restrictions on immediate family reunification of foreign nationals are thus governed by law and are also applied in conformity with the law. However, since it is very difficult to judge and hardly possible to answer exhaustively whether these restrictions include elements of unfairness, unpredictability, or unreasonableness and therefore might be characterized as "arbitrary", Liechtenstein has decided to make a reservation to this article of the Covenant as follows, in order to take a rather cautious approach:

"The Principality of Liechtenstein makes the reservation that the right to respect for family life, as guaranteed by article 17, paragraph 1 of the Covenant, shall be exercised, with regard to aliens, in accordance with the principles at present embodied in the legislation on aliens."

The reservation corresponds to the reservation made by Liechtenstein to article 8 of the ECHR. As long as Liechtenstein is faced with immigration pressure, it will not be possible to relax the provisions concerning the granting of family reunification to citizens of non-EEA States.

Protection against unlawful interference with honor and reputation

Measures under criminal law may be taken against interference with honor and reputation, whether by private persons or persons in an official capacity. § 111 et seq. of the Penal Code make slander, libel, and defamation punishable offenses. Criminal offenses against honor are in general only prosecuted on request of the person whose honor has been violated. The right to legal redress and damages is governed by the Law

on Persons and Companies (Personen- und Gesellschaftsrecht, PGR), LGBl. 1926 No. 4. Article 40(3) of the PGR states in this connection that the judge may, in case of malice, award non-monetary damages in addition to or instead of monetary damages, such as a public apology by order of the court, publication of the judgment at the expense of the losing party, contribution of a sum of money to a charitable foundation or institution designated by the injured party or to a poverty alleviation fund, and so on. The Law on Persons and Companies also governs the right of counterstatement. Natural persons, legal entities, and authorities thereby have the right of counterstatement if they are immediately affected in their personality by factual presentations in periodic media, in particular the press, radio, and television. Factual presentations are information that can be verified with regard to accuracy and completeness and the essential message of which does not consist in an expression of personal opinion, a judgment, or a warning about the behavior of another person. The counterstatement shall be published as soon as possible in a manner that reaches the same circle as the presentation of facts complained about. The counterstatement must have the same publication value as the publication it refers to.

Article 18

Paragraphs 1-3

The freedom of religion and conscience is guaranteed in Liechtenstein by the Constitution (article 37 LV). The Roman Catholic Church is the national church and, as such, enjoys the full protection of the State. It is not, however, an “established church” like the Church of England. The Constitution guarantees all denominations the practice of their beliefs and the holding of church services within the constraints of morality and public order. Article 39 of the Liechtenstein Constitution states that the enjoyment of civil and political rights shall not depend on religious belief.

The practice of religious belief is protected by the provisions concerning criminal offenses against religious peace and the peace of the dead in the Penal Code (§§ 188 to 191 StGB). These provisions apply to all religious communities in Liechtenstein.

Paragraph 4

Article 1 of the Education Act (LGBl. 1972 No. 7) guarantees the influence of parents on the religious and moral education of children. At the same time, the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) grants parents both the right and the duty to guide the child, taking into consideration the child’s talents, skills, and inclinations (and therefore also religious conviction) (§§ 144 and 146 ABGB). Until the 14th birthday of the child, the parents or guardians as the legal representatives of the child have the right to decide, in the context of their general custody of the child, on the child’s religious training (§ 147 ABGB). Dispensation from religious education in public schools is possible, with reference to the freedom of religion. An agreement approved by the Government in January 2003 concerning the restructuring of religious education at secondary schools provides that denominational Catholic religious

education will be offered as an elective compulsory subject. Students or their parents or legal guardians may choose between denominational religious education and the new subject "Religion and Culture". This subject is interdenominational. It is not religious instruction, but rather a discussion of religions and the meaning of religious beliefs in personal life, society, and culture. Classroom instruction aims to lead to a better understanding among religious and cultural communities on the basis of ethic and democratic principles.

Article 19

Freedom of opinion is guaranteed by article 40 of the Constitution and is also enshrined in article 10 of the ECHR. Article 40 of the Constitution states that everyone has the right to freely express opinions and communicate ideas orally or in writing, print, or images, within the limits of law and morality. Censorship is only permitted in respect of public performances and exhibitions. The legal limits are primarily to be found in the Penal Code, which *inter alia* defines criminal offenses against honor (§§ 111 et seq. StGB); violation of privacy and certain professional secrecy (§§ 118 et seq. StGB); and criminal offenses against morality (§§ 200 et seq. StGB), public peace (§§ 274 et seq. StGB), and religious peace (§§ 188 et seq. StGB). In view of the accession to the 1965 International Convention on the Elimination of all Forms of Racial Discrimination (LGBI. 2000 No. 80), a new penal provision was also introduced against the dissemination of racist thought (§ 283 StGB); (cf. also commentary on article 20).

In addition, there are also restrictions on the freedom of opinion and information to be found in the Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) and in the State Security Act (Staatsschutzgesetz, StSchG, LGBI. 1949 No. 8). According to article 124 paragraph 1 PGR, legal entities may be dissolved pursuant to a lawsuit in the case of immoral purposes or subversive purposes or means (article 124 paragraph 6 PGR), or *ex officio* in the case of injury to Liechtenstein national interests or disruption of international relations, in accordance with article 986(4) PGR. The State Security Act also governs the confiscation of printed materials the content of which is likely to endanger public peace and order (article 19 StSchG).

Inmates of Liechtenstein prisons are generally allowed to procure books, newspapers, and periodicals, as long as the objective of the imprisonment and the safety and order of the prison are not endangered. Ownership of radios in prisons may be allowed on an exceptional basis. Persons in pretrial detention may communicate in writing with all persons not suspected of representing an interference with the purpose of the pretrial detention. Prisoners may procure comforts and activities corresponding to their status and financial situation at their own expense, provided that such comforts and activities are compatible with the purpose of the imprisonment and disrupt neither the prison rules nor safety. This includes the use of a television.

In order to regulate public information on behalf of the State authorities, a Public Information Act was adopted in 1999 (LGBI. 1999 No. 159). In particular, the Public Information Act determines the right of the population to information concerning the

activities of the authorities and the right to examine public records. The activities of the public authorities shall be made transparent, in order to promote the free development of public opinion and to promote trust in the activities of the authorities. State actions are disclosed insofar as public or private interests do not clearly outweigh the value of such disclosure. The media must be accorded equal treatment.

The Law of 25 November 1999 on the Promotion and Compensation for Services of the Media (LGBI. 2000 No. 14) aims to preserve and promote the diversity of the Liechtenstein media landscape and to guarantee a free and independent process of development of the public opinion, as well as compensation for the services of the media. Media promotion contributions and media compensation contributions support reporting in the print and electronic media on topics and events in Liechtenstein, as well as other measures to promote the Liechtenstein media landscape.

Article 20

Liechtenstein acceded to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination on 1 March 2000. In preparation for the accession, the provisions in the Liechtenstein Penal Code concerning racial discrimination were tightened. According to the revised § 283 StGB, a person shall be sentenced to imprisonment of up to two years if the person:

- a) publicly incites hatred or discrimination against a person or group of persons on the basis of race, ethnicity, or religion;
- b) publicly disseminates ideologies aimed at the systematic disparagement or defamation of members of a race, ethnicity, or religion;
- c) organizes, promotes, or participates in propaganda actions with the same objective;
- d) publicly disparages or discriminates against a person or a group of persons on the basis of race, ethnicity, or religion in a manner violating human dignity, by means of spoken words, writing, images, electronically transmitted symbols, gestures, physical violence, or any other means;
- e) denies a service offered by the person that is meant for the general public to a person or a group of person on the basis of race, ethnicity, or religion;
- f) participates as a member in an association whose activity consists of promoting or inciting racial discrimination.

It is also a criminal offense to manufacture, import, store, or distribute, for the purpose of further dissemination, documents, sound or image recordings, electronically transmitted symbols, depictions, or other objects of this sort whose content is a racial discrimination.

Pursuant to the introduction of these tightened legal provisions, Liechtenstein withdrew its reservation to article 20 paragraph 2 of the Covenant on 28 April 2000.

In contrast to the provisions concerning racial discrimination, Liechtenstein criminal law does not contain an explicit provision concerning the prohibition of war propaganda. There are, however, a wide range of thematically related provisions. According to the Penal Code, persons shall be punished with up to five years of imprisonment if they undertake to change the constitution of a foreign State or cause the secession of territory belonging to a foreign State through the threat of violence while they are in Liechtenstein (§ 316 StGB). The State Security Act (LGBI. 1949 No. 8) prohibits printed materials calling for acts of violence. In addition, the Law on Persons and Companies (LGBI. 1926 No. 4) contains provisions concerning the dissolution of legal entities in the case of activities injurious to Liechtenstein's national interests or disruptive of international relations (article 986(4) PGR).

Of note in this context are the accession of Liechtenstein to the Convention on the Prevention and Punishment of the Crime of Genocide and § 321 of the Penal Code on the prohibition of genocide. According to this provision, a person shall be sentenced to life imprisonment who, with the intent to destroy, in whole or in part, a group associated with a church or religious community, a race, an ethnicity, a tribe, or a State, kills members of the group, causes serious bodily or mental harm to members of the group, deliberately inflicts on the group conditions of life calculated to bring about the death of all of its members or a part of the group, imposes measures intended to prevent births within the group, or transfers children of the group to another group by force or threat of force. A person shall be sentenced to imprisonment of up to ten years who colludes with another person to jointly undertake such acts.

Although all of these provisions aim to prevent the stirring up of violent conflict, it cannot be claimed with certainty that these provisions are sufficient to satisfy article 20 paragraph 1 of the Covenant, given the absence of a generally recognized definition of the term "war propaganda". Liechtenstein has therefore made the following reservation to this article:

"The Principality of Liechtenstein reserves the right not to adopt further measures to ban propaganda for war, which is prohibited by article 20, paragraph 1 of the Covenant."

Article 21

The right of free assembly, together with the right of free association, is enshrined in article 41 of the Constitution. In addition, freedom of assembly in Liechtenstein is guaranteed by article 11 of the ECHR. The Constitutional provision does not include any explicit exceptions and guarantees the freedom of assembly within the legal limits.

All public, non-religious events necessitating official measures and especially security measures require approval in Liechtenstein. Political and educational events in particular

are exempt. For the (few) demonstrations that have so far taken place in Liechtenstein, approval has always been granted. Gatherings on private land or on private premises are only subject to the prohibition against disturbance of the peace. Freedom of assembly is protected under criminal law by §§ 284 and 285 of the Penal Code, which punishes anyone who prevents or breaks up a lawful gathering, a march, or similar rally or demonstration by force or threat of force. It is also a criminal offense to considerably disrupt a lawful gathering by making the place of gathering inaccessible, preventing a person with the right to attend the gathering from accessing it, hampering a person's access, or making a person's access to the gathering impossible or difficult by means of serious harassment, or to gain unauthorized access to the gathering or to remove a person called upon to lead the gathering or maintain order.

Article 22

Freedom of association is guaranteed by article 41 of the Constitution and article 11 of the ECHR. It is limited in particular by the Penal Code provision introduced in 2000 which makes membership in a group a criminal offense if the activity of the group is to promote or incite racial discrimination (§ 283 paragraph 6 StGB). Further limitations are contained in § 278 StGB (establishment of gangs), § 278 a StGB (criminal organizations), and § 279 StGB (armed groups).

The legal provisions concerning the establishment of labor unions are contained in article 96 of the Worker Protection Act (LGBI. 1946 No. 4). The recognition of labor unions by the authorities is thereby subject to certain criteria. The labor union must have local branches in at least four municipalities of the country, each of which must have at least ten members living in the municipality. In addition, the organization must have at least 400 members with Liechtenstein nationality. The principle of establishment of labor unions is also recognized by the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) in the provisions concerning comprehensive labor agreements (§ 1173a article 101 et seq. ABGB). There currently exists one labor union in Liechtenstein (Liechtenstein Employee Association) affiliated with the World Confederation of Labor (WCL). It has a total of 1450 members as is responsible for approximately 10,000 employees.

Article 23

State protection of the family and family subsidies in Liechtenstein are guaranteed by legislation in various areas. The provisions of the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) establish the framework for State intervention in the rights of parents. Third parties may only intervene in the rights of parents (care, education) to the extent this is permitted by the parents themselves, directly pursuant to law, or pursuant to an official order (§ 137a paragraph 1 ABGB). Such an order, especially concerning the withdrawal or restriction of parental custody, requires the factual determination of endangerment of the child's welfare (§ 176 ABGB) and may

only be applied to the extent necessary to safeguard the welfare of the child (§ 177 ABGB).

The Family Allowances Act (LGBI. 1986 No. 28) and the Child Support Advance Payment Act (LGBI. 1989 No. 47) also support the protection of the family. The Family Allowances Act provides for the payment of birth and child allowances to all persons lawfully residing or employed in Liechtenstein; under the Child Support Advance Payment Act, the State under certain conditions grants advance payments for the legal support of children. Families also receive child support through tax benefits and housing subsidies. According to the Law of 13 September 2000 on Rental Subsidies for Families (LGBI. 2000 No. 202), the State and the municipalities grant rental subsidies to families in view of financing personal needs and permanent residence in Liechtenstein. Rental subsidies may be claimed if household income remains below a certain maximum amount indexed to the number of persons living in the common household.

Articles 9 to 11 of the Liechtenstein Marriage Act of 13 December 1973 (LGBI. 1974 No. 20) govern the right of marriage. In order to enter into marriage, the bride and the groom must have reached their 18th birthday and be of sound mind. Under-age or legally incapacitated persons may only enter into marriage with the consent of their legal representative. If the legal representative denies consent without good reason, the bride or groom may apply for a court order to replace consent. The voluntary nature of marriage is guaranteed by the provisions concerning objection. Article 18 paragraph 1 of the Marriage Act states that during the announcement period, any interested person may submit an objection to the marriage with reference to the lack of capacity of the bride or groom to marry or to a legal impediment to marriage (blood relationship, adoption, or a preexisting marriage).

Liechtenstein legislation is characterized by the partnership principle and contains no gender-specific differentiation of the rights of the marriage partners. Article 43 of the Marriage Act first states the rights and duties of the marriage partners in general; paragraph 2 states that the marriage partners shall preserve the welfare of the union in harmonious partnership and jointly care for the children. Article 46 requires marriage partners to jointly provide for the proper maintenance of the family; paragraph 2 specifies mutual agreement as the basis for shaping maintenance of the family. The consequences of separation and divorce are governed by articles 79 to 89(s) of the Marriage Act.

Article 24

Paragraph 1

The family law reform of 1992/1993 largely eliminated the differential treatment of children born in and out of wedlock. The only difference between children born in and out of wedlock now concerns custody, which is granted solely to the mother for children born out of wedlock (§ 166 ABGB). Upon joint application of the parents, however, the court may grant joint custody of the child born out of wedlock, if the parents live with

the child in a permanent domestic arrangement and if granting of such custody is not detrimental to the welfare of the child (§ 167 ABGB).

In the framework of implementation of the Platform of Action of the Fourth UN World Conference on Women in Beijing in 1995, Liechtenstein has taken administrative measures in addition to legislative amendments which aim to counteract the *de facto* unequal treatment of women and girls. These measures include *inter alia* promotion of equal opportunity in education by sensitizing teachers to the need for non-discriminatory instruction, examination and revision of educational materials, questioning of traditional gender roles in courses and lectures, motivation of girls to expand the “classic” female choices of profession, and prevention of sexual violence.

Paragraphs 2 and 3

The Law on Persons and Companies governs the recording of children in the birth register, regardless of whether the parents are known (article 92 and 93 PGR). All persons are recorded in the birth register who are either Liechtenstein citizens, were born in Liechtenstein, or whose mother resided in Liechtenstein at the time of the birth. In general, every birth must be announced to the registrar within three days (article 90 paragraph 1 PGR). The administrator of the hospital in which the child was born or the physician, midwife, or any other person present at the birth, including the father and the mother, to the extent she is able, are responsible for the announcement (article 91 PGR).

If the parents are known, the family name, given name, profession, home country or home town, and residence of the parents shall be recorded in the birth register, in addition to the given names and family names of the child (article 92 PGR). The name of a child whose parents are unknown is chosen by the mayor of the municipality where the child was found (article 93 PGR). The right of children born in and out of wedlock and of adoptive children to a family name is enshrined in the General Civil Code (§§ 139, 165, 183 ABGB).

The naming of a child is part of the rights and duties of the parents in relation to their child. Parents are therefore required to jointly give their child a name. If they fail to fulfill this responsibility, for instance if they are unable to agree on a name, the welfare of the child is endangered. According to the General Civil Code, their custody may then be (partially) withdrawn (§ 176 ABGB). Relevant court orders are then issued to give the child a name.

According to the Law on Persons and Companies, changes in personal status such as adoption are recorded in the birth register (article 94 PGR). The relationship with the biological parents remains recorded in the register and may be accessed by the adoptive child pursuant to the child’s right to examine the birth register (article 79 PGR).

Liechtenstein citizenship may be transferred from either the father or the mother to their mutual child. The acquisition of Liechtenstein citizenship on the basis of birth in Liechtenstein (*ius soli*) is not possible. If neither the father nor the mother has been issued a passport by their country of origin, Liechtenstein authorities issue a document to both parents allowing entry and departure. In Liechtenstein statistics, they are listed as

citizens of their country of origin. Their mutual child born in Liechtenstein also receives the necessary travel document, but not Liechtenstein citizenship, since *ius soli* does not apply in Liechtenstein. For this reason, a reservation to article 24 paragraph 3 had to be made, corresponding to the reservation made by Liechtenstein to article 7 of the 1989 Convention on the Rights of the Child.

The possibility is currently being examined whether accession to the Convention on the Reduction of Statelessness of 30 August 1961 may create the domestic conditions for withdrawal of the reservation.

Article 25

The rights guaranteed in article 25 are ensured by the Constitution and at the statutory level. Article 29 paragraph 2 of the Constitution states that political rights at the national level are accorded to all Liechtenstein citizens who have reached their 18th birthday, whose normal residence is in Liechtenstein, and whose right to vote has not been suspended. According to article 110bis of the Constitution, the same right also applies at the municipal level to all Liechtenstein citizens residing in the municipality. Article 45 of the Constitution states that Parliament is the lawful organ of the entirety of Liechtenstein citizens and, as such, has the duty to safeguard the interests of the people in relation to the Government. The Law on the Exercise of Political Rights in National Matters (LGBI. 1985 No. 4) reinforces the principle according to which Liechtenstein citizens who have reached their 18th birthday and whose normal residence has been in Liechtenstein for at least one month prior to the vote or election are eligible to vote and be elected at the national level. In addition, the principle is also emphasized that participation in votes and elections is a civil duty. Article 2 of this Law determines that a person is excluded from the right to vote if:

- a) the person's right to vote has been suspended pursuant to a law or legally binding judicial conviction;
- b) the person is under the care of a guardian, except in the case of guardianship on the person's own request;
- c) the person is serving a prison sentence during the vote or election for a crime or misdemeanor;
- d) the person has been admitted to a custody, care, or reform institution pursuant to an order of the authorities, for the duration of the admittance.

The Municipalities Act of 20 March 1996 (LGBI. 1996 No. 76) governs the organization of the municipal assembly as the highest organ of the municipality. The municipal assembly is constituted by all eligible voters residing in the municipality. The Municipalities Act also governs the election and powers of the municipal council and the mayor. The municipal council and the mayor are elected by the eligible voters of the

municipality every four years; they represent the municipality in accordance with their mandate.

Article 26

Equality before the law and equality before the courts are guaranteed in Liechtenstein (cf. discussion of article 14 paragraph 1). In relation to the rights guaranteed by the Covenant, Liechtenstein and foreign citizens are treated equally (cf. discussion of article 2 paragraph 1). In contrast, a number of other rights do however depend on Liechtenstein citizenship (or the citizenship of certain other countries) (e.g., the right to housing subsidies, right to educational grants). Since article 26 can be interpreted as independent law with its own scope of application not limited to the rights guaranteed by the Covenant, Liechtenstein has made the following reservation to the Covenant:

“The Principality of Liechtenstein reserves the right to guarantee the rights contained in article 26 of the Covenant concerning the equality of all persons before the law and their entitlement without any discrimination to the equal protection of the law only in connection with other rights contained in the present Covenant.”

Article 27

Freedom of assembly is guaranteed by the Constitution and the Penal Code (cf. discussion of article 21). The same applies to freedom of religion (cf. discussion of article 18). Article 6 of the Constitution specifies German as the national and official language. This language is to be used when communicating with the authorities. Since there are no linguistic minorities in Liechtenstein within the meaning of the Covenant, no further legislative measures have been adopted to implement this article. It is worth mentioning, however, that private sponsors offering courses for foreign children in their native language and on the customs and culture of their home country are provided with the necessary infrastructure (school rooms, etc.) and the schedules of the public schools are organized in an accordingly flexible manner.

Table of abbreviations:

ANAG	Federal Law on the Temporary and Permanent Residence of Foreign Nationals (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer)
ECHR	European Convention on Human Rights
LGBL	Liechtenstein Legal Gazette (Landesgesetzblatt)
LV	Liechtenstein Constitution (Landesverfassung)
RHG	Mutual Legal Assistance Act (Rechtshilfegesetz)
StGB	Liechtenstein Penal Code (Strafgesetzbuch)
StGHG	Constitutional Court Act of 5 November 1925 (Gesetz vom 5. November 1925 über den Staatsgerichtshof)
StPO	Code of Criminal Procedure (Strafprozessordnung)
ZPO	Code of Civil Procedure (Zivilprozessordnung)