



List of Issues for Liechtenstein to Reporting

United Nations Human Rights Committee

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I. Authors

The Wrongful Conviction International Law Task Force (WCILTF) is a global coalition of law professors, attorneys and activists working together to fill the “Innocence Gap” in international law. The WCILTF is supported by a pro bono legal team at the international law firm Proskauer Rose (www.proskauer.com/) located in New York City.

In the past twenty-five years, wrongful conviction of the innocent has emerged as a major problem in criminal justice systems around the world. Research indicates that the problem has always existed but has only come to light in recent decades due to forensic advancements allowing for post-conviction DNA testing of crime scene evidence. Wrongful convictions occur because of human limitations in investigation and evidence collection, such as memory weaknesses and malleability (leading to misidentifications by eyewitnesses), unreliable or faulty forensic evidence, false confessions, confirmation bias or tunnel vision on behalf of investigators, inadequate defense lawyering, and many other human problems. Thus, wrongful convictions exist in all legal systems around the world, as all nations use the same types of evidence and investigation techniques regardless of the precise legal procedures employed in their courtrooms.

NGOs called “Innocence Projects” have sprung up around the globe to combat this problem, and now entire networks of innocence projects exist in Asia, Europe, North America and South America. Innocence Projects are often housed at law schools and are operated by law professors and law students. In one member state, for example, more than 3,000 innocent people have been released from prison in recent years due to the work of NGOs like Innocence Projects. Exonerations of the innocent have occurred across the globe in the past three decades.

For a brief video overview of the global problem of wrongful convictions, and the efforts of Innocence Projects to combat the problem, please view:
<https://youtu.be/jMATkuFaRU8?si=fO0wXGhPr-oCyhBA>

As the innocence movement has developed a global presence in recent years, it has become apparent to legal scholars that an “Innocence Gap” exists in international law. The WCILTF formed to combat this problem and help fill the Innocence Gap. The WCILTF is comprised of more than twenty-five law professors and Innocence Project leaders from across Asia, Europe, North America and South America.

II. Filling the Innocence Gap

Due to the relatively recent discovery of wrongful convictions, international law covenants and treaties predate awareness of this problem and thus do not speak directly to issue. In recent years, however, the United Nations Human Rights Committee (HRC) has identified key rights to the benefit of incarcerated person claiming innocence to be derived from the right to a fair trial and other existing rights. For example, in *Abdiev v. Kazakhstan*, 2023, the HRC stated that ***the right of incarcerated persons to re-open a criminal case in order to present new evidence of innocence after conviction and appeal have concluded, in order to achieve exoneration and freedom, is essential to the right to a fair trial under Article 14(1) of the ICCPR***. Similarly, on October 3, 2023, in Concluding Observations on the Fifth Periodic Report of the Republic of Korea, the HRC observed that South Korea should “provide adequate legal and financial assistance to enable individuals sentenced to death to ***re-examine convictions on the basis of newly discovered evidence, including new DNA evidence***.” Likewise, on July 25, 2024, in Concluding Observations on the Second Periodic Report of Maldives, the HRC expressed concern “about the lack of information on the existence of a procedure enabling individuals sentenced to death to seek a review of their convictions and sentences based on newly discovered evidence of their innocence, including new DNA evidence, and, if wrongfully convicted, to provide them with compensation.” The HRC recommended that Maldives take all necessary measures to ensure that “death sentence can be reviewed based on ***newly discovered evidence of their innocence***, including new DNA evidence, adequate legal and financial assistance is provided to enable this review and, ***if wrongfully convicted, individuals have access to effective remedies***, including compensation” para. 28(e). See Brandon Garrett, Laurence Helfer and Jayne Huckerby, *Closing International Law’s Innocence Gap*, S. Cal. L. Rev. 95 (2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3803518#

III. Rights of Innocent Incarcerated Persons in Liechtenstein

Lack of a Public Records Policy

Based on the research of the WCILTF, it appears Liechtenstein does not have any public record policy granting NGOs or journalists access to police files and documents of an incarcerated person's case post-conviction. However, §47 of the Code of Criminal Procedure (StPO) provides all investigative measures should be recorded. §50 provides nothing substantial may be deleted from the record.

§50 goes further and states that the individual who was examined has the right to access the files. Such a person shall, on request, be provided with a copy or photocopy immediately unless this conflicts with legitimate interests of the proceedings or of third parties.

While the Code of Criminal Procedure (StPO) affords access to individuals taking part in proceedings, no information or policy allows third parties or NGOs access to these materials.

Absence of Required Interrogation Recording Policy

Our research also indicates Liechtenstein does not have a regulation requiring the recording of police interrogations. §50a of the Code of Criminal Procedure (StPO) states:

1) Following the express information to the effect of the person being examined, it shall be admissible to make an audio or video recording of an examination as long as such recording covers the entire examination. Where a witness is being examined, this shall not be done if and as soon as the witness objects to such recording, without prejudice to special legal provisions (§§ 69, 115a, 195a, 197(3)).

2) In the event of a recording pursuant to Para. (1), a written summary of the content of the examination may be produced instead of a record, which summary the investigating judge shall sign and make part of the files. Furthermore, the rules of § 48 shall be applied to such summary.

Thus, a suspect *may* have their interrogation recorded, and safeguards ensure the entirety of the interview is recorded *if* any of the interactions are documented. However, there is no requirement for these recordings, and there are no regulations to instruct law enforcement or hold them to a certain standard.

Absence of Police Identification procedures for eyewitnesses That Adhere to Best Practices Devised by the Scientific Community

Our research indicates Liechtenstein lacks identification procedures deemed credible by the scientific community, such as the double-blind eyewitness identification requirement.

The Police Act does not provide much guidance for the identification of suspects or proper investigation techniques. Further, the Code of Criminal Procedure (StPO) provides no additional guidance for fair and reliable identification of suspects.

IV. Questions to Liechtenstein

1. Does Liechtenstein have a legal procedure for post-conviction revision or re-opening of convictions based on new evidence of innocence?
2. If so, is there a deadline by which such a motion must be brought, or may an incarcerated person bring such a legal motion at any time?
3. If so, what is the legal standard that the incarcerated person must meet to reopen the case?
4. Have any post-conviction motions presenting new evidence of innocence been successfully granted by a court in Liechtenstein, resulting in the incarcerated person's exoneration and freedom? Have any such motions been denied by courts in Liechtenstein?
5. Does Liechtenstein have a law allowing incarcerated persons to petition for post-conviction DNA testing of crime scene evidence to prove innocence and seek relief?
6. Does Liechtenstein have a legal procedure requiring biological evidence collected from the crime scene to be properly stored and preserved for future DNA testing?
7. If so, how long must the biological evidence be preserved?
8. Does Liechtenstein have a "sunshine law" or "public records law" granting defense attorneys, NGOs, journalists, or incarcerated persons access to police files and documents of an incarcerated person's case post-conviction?
9. Does Liechtenstein have a legal standard requiring the police and prosecution to disclose to the defense pre-trial any exculpatory evidence or other information helpful to the defense or that might lead to new avenues of pre-trial investigation that the defense might conduct?
10. If so, what is the legal standard pertaining to this disclosure requirement?
11. Does Liechtenstein have a law providing compensation to the wrongfully convicted after exoneration and release from prison? If so, what do such laws provide?
12. Does Liechtenstein have laws or regulations requiring the recording of police interrogations of suspects? If so, please outline the requirements of such laws or regulations.
13. Does Liechtenstein have laws or regulations ensuring that police identification procedures for eyewitnesses adhere to best practices devised by the scientific community, such as the double-blind eyewitness identification requirement? See

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/double-blind-sequential-police-lineup-procedures-toward-integrated>

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