



**PRISON
LITIGATION
NETWORK**

**ANNUAL
REPORT**
2016



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OUR MISSION

The Association Prison Litigation Network (Réseau Contentieux Pénitentiaire) was founded in 2013 by a network of lawyers and researchers active in the penitentiary field in France and Russia.

The Network aims at heightening the judicial protection of prisoners' fundamental rights in Member States of the Council of Europe.

Considering that an effective access to justice is currently seen by the European Court of Human Rights as the central axis for any strategy aiming at erasing all systemic and structural factors leading to breaches of the European Convention in prisons, founders of the Network see strategic litigation as an important lever to reform prison law in Europe.

In this regard, and by building its litigation strategies on research projects in the field of social science and law, the Network aims at advancing the ECtHR jurisprudence on the most problematic aspects of prison systems in European countries.

PLN activities focus on four priorities:

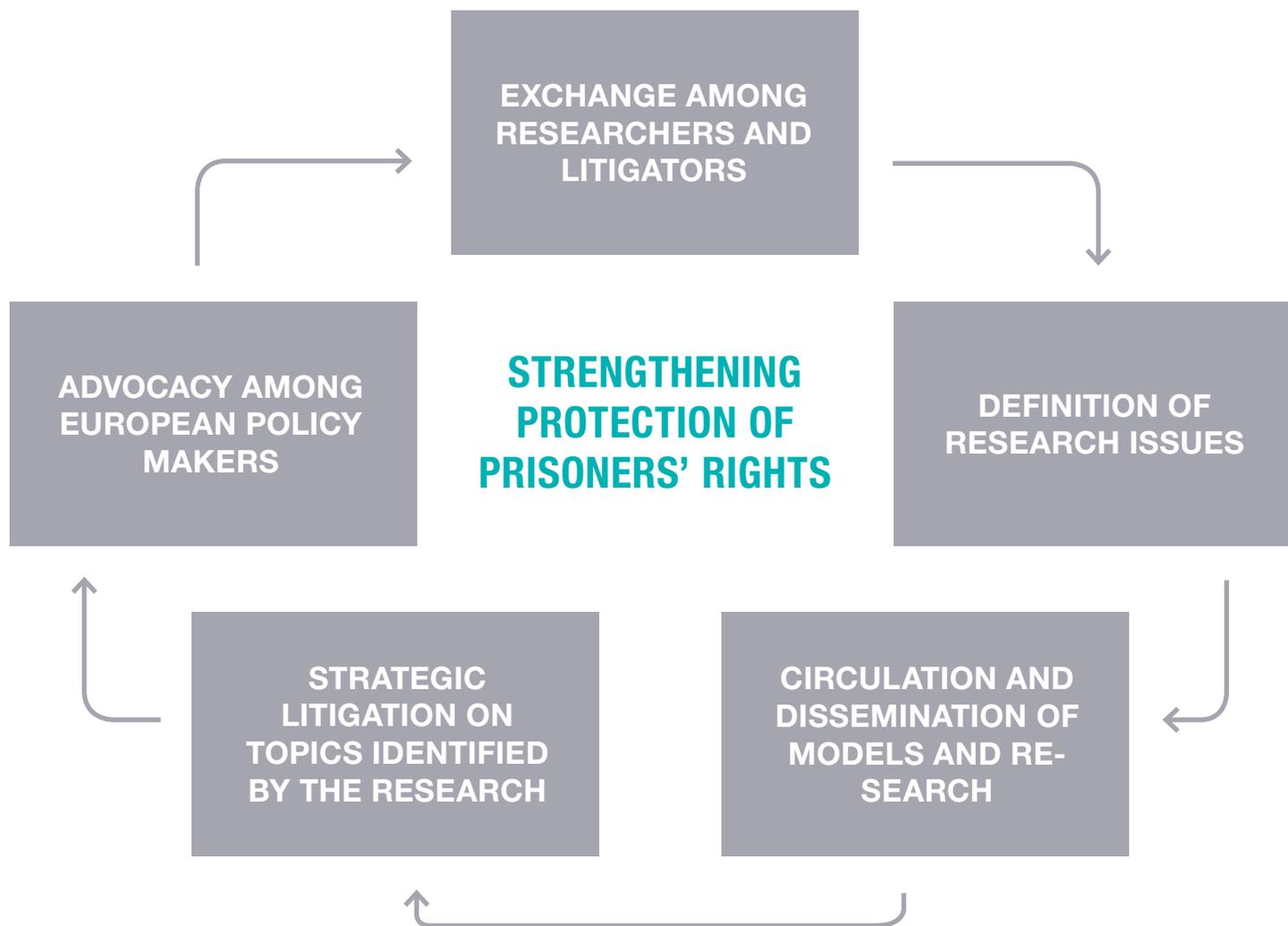
- raising networking and strengthening capacities of NGOs engaged in the protection of prisoners' right and universities developing research on the topic;
- developing analytical and comparative research in order to improve knowledge on national law and promoting the circulation of most protective normative models in Europe;

— developing litigation on topics identified by research;

— analysing the impact of the entry of the law into prison to distinguish between real transformation and formal adjustment and deter possible adverse evolution for the incarcerated persons;

Seventeen non-governmental organisations from Member States of the Council of Europe are currently affiliated to the Network and partnerships were set up with five university research centres in order to develop action-research projects.

COORDINATING RESEARCH AND STRATEGIC LITIGATION TO ADVANCE RIGHTS OF DETAINEES IN EUROPE



OUR ACTION IN 2016

The activities conducted in 2016 are a follow-up of the EU-funded action-research project Prison Litigation Network carried out in 11 countries of the EU (Austria, Belgium, Bulgaria, England and Wales, France, Germany, Ireland, Italy, the Netherlands, Romania, Spain) on access to legal remedies for detainees.

This [research](#), gathering 10 European NGOs and research centres alongside the association Prison Litigation Network, has highlighted hurdles to access to justice and the defence of detainees.

These are of two types of hurdles:

- due to the poor legal and financial resources of detainees, an effective access to legal remedies depends above all on the level of legal aid available to them and the support from NGOs to conduct prison litigation, and in particular their capacity to mobilise European law;
- detainees do not go to court because they fear potential retaliation, which can take the form of violence or harassment, or hindrances of access to adjustments of sentences. Yet these two issues are very poorly protected by European law, although it remains the main vehicle for transformation of national legislations;

The action of the PLN in 2016 has built on these lessons learned, through 3 types of action:

1. Capacity building of prisoners' rights defenders in Europe, through networking activities and dissemination of legal resources and analysis, trainings, monitoring and supervision;
2. Research activities;
3. Litigation in domestic courts and at the European Court of Human Rights;

**ADDRESSING
HURDLES TO
ACCESS OF
DETAINED PERSONS
TO JUSTICE : POOR
ACCESS TO LEGAL
AID AND FEAR
FOR POTENTIAL
RETALIATION**

1. CAPACITY BUILDING

Closure of the EU-funded project Prison Litigation Network on mechanisms of access to legal remedies for detained persons in European prisons

In the frame of this [project](#) (May 2014 – June 2016) 38 training seminars and 7 national conferences were organized in 7 countries of the European Union (France, Belgium, Romania, Bulgaria, Ireland, Italy, Spain) and a final European conference was held at the Strasbourg Court in June 2016. Through these activities 721 judges and lawyers, 316 members of NGOs who are active in the defence of prisoners' rights and 114 prison officials were trained in European law. In the target countries, key actors in penitentiary law (supreme court judges, penitentiary judges, lawyers most frequently involved in penitentiary disputes) could thus be informed on European requirements, in most cases by judges/former judges and lawyers of the ECtHR themselves. In each country legal tools have been developed in the national language. In this way, practitioners in charge

of bringing remedies of detainees before courts have been able to introduce precise references to European law in their court application.

8th Ural Human Rights School, Yekaterinburg, on "Private Life: International And National Legal Standards"

PLN was partner of the organisation Sutyazhnik for the organisation of the 8th Ural [Human Rights School on 22–25 September](#). [The School was mainly dedicated to private and family life](#), in different fields: prisons, LGBT, secrecy of private communications and bioethics.

The seminar, which lasted 4 days, gathered some 50 to 70 activists and jurists and focused on different levels of analysis: presentations of organisations that are active in the field, analysis and trainings on law (with jurists from the ECtHR), preparation to briefings with media from experienced journalists, and international comparative analysis (Russia, UK, Germany, Switzerland, France).

The PLN was represented by

Ernest Mezak (Maintaining family ties in the Russian penitentiary system), Alexey Laptev (Protection by the ECtHR of detainees' rights with regard to private and family life) and Hugues de Suremain (Rights of prisoners to rehabilitation under the European Convention of Human Rights).

The PLN continued in 2017 its partnership with the NGO Sutyazhnik for the organisation of the 9th Ural Human Rights School on 30 March - 2 April 2017 on the topic of litigation with regard to long sentences (access to parole and detention regimes)

Dissemination of ECtHR case law

Thanks to the monitoring work of **Béranger Dominici, Isabelle Mansuy and Pascal Décarpes**, the PLN keeps disseminating on a monthly or quarterly basis a newsletter on the ECtHR case law with regards to prison.

In 2016, 8 newsletters were thus disseminated (to be found [here](#)), as well a [special issue](#) issued at the beginning of 2017 on the most important decisions of the year 2016.

**THE PLN ISSUES
EACH QUARTER
OF YEAR
A NEWSLETTER
WITH ANALYSIS OF
THE RECENT ECHR
JURISPRUDENCE ON
PRISON**

The PLN is now partner of the [ICPR](#) (Institute for Criminal Policy Research, London University) for this activity.

International monitoring mission on the trial of prisoners of Kopeysk, Russia

Upon the request of the Chelyabinsk Public Monitoring Commission, a law-mandated regional body in charge of monitoring conditions in places of detention, Prison Litigation Network is monitoring the trial of prisoners of the Penitentiary Colony No.6 of Kopeysk, who collectively protested in 2012 against the use of torture and extortion in prison. 17 participants of the protest are on trial for having organised the protest.

The PLN team working on the project consists of a coordinator, **Alessandro Bartolini** (former member of ICRC and OSCE in post-Soviet countries) and two observers: **Aleksey Laptev** (former jurist at the ECtHR, lawyer in Moscow) and **Ernest Mezak** (expert with the Council of Europe, jurist in the Russian organisation Public Verdict). A steering com-

mittee composed of nine experts (Russia, France, Denmark, US) supervises the observation.

Four years exactly after the start of the protest, the PLN released on 25 November 2016 a joint [press-release](#) with FIDH (Federation Internationale des Ligues des Droits de l'Homme). [The intermediary report](#) on the monitoring mission is also now available on the PLN website.

In parallel to the observation of the trial, some litigation work is being launched to advance the right of detainees (see 3. Litigation)

The observation will continue in 2017 and a dedicated website [kopeyskjustice.info](#), available in English and Russian language, will be launched in summer 2017, with the support of Maria Noel, Russian journalist and prisoners' rights activist, and Madeleine Leroyer, author of a documentary film mainly dedicated to this affair.

Other perspectives in 2017

A concept note on the strengthening of prison oversight mechanisms and strategic litigation in Russian prisons was submitted to the EuropeAid Agency, Human Rights Programme in April 2017

The project aims at strengthening prison public oversight mechanisms by enhancing coordinated prison monitoring tools, on the basis of the Russian Law on Public Monitoring Commissions and alternative legislative instruments, and at developing strategic prison litigation at national and European level in order to initiate a reform of Russian prison law.

If granted, the project will be coordinated by the Bulgarian Helsinki Committee in partnership with the PLN, the Russian NGOs Sutyazhnik (Yekaterinburg) and Perm Regional Human Rights Center, for 2 years.

2. RESEARCH

Publications

As follow-up on the research project on mechanisms of access to legal remedies for detained persons in European prisons, a book on the influence of the European jurisprudence on penal and penitentiary policies in Europe will be published during the spring 2017 by the British editor Routledge. This publication is coordinated by **Gaëtan Cliquennois**.

The minutes of the two conferences organised in 2016 will be published in September 2017 by the “Revue des droits de l’homme”:

- the first conference called **Surpopulation carcérale: quel traitement contentieux?** (Prison overcrowding: which litigation?) was organised by the University Paris 1 Pantheon Sorbonne on April 21st, 2016 with a particular focus on the prison situation in France as far as the requirements of the ECtHR are concerned, with some insight on the Italian situation after the pilot judgment *Torreggiani v. Italy* ([more here](#)).

- the second conference was organised at the European Court of Human Rights on June 14 and 15 on the topic of **The Protection of Rights of Detained Persons in Europe**. The president and three judges of the Court presented their view on the evolution of the jurisprudence. In another panel discussion, academics and members of NGOs discussed the conditions for taking account of ECtHR requirements in ten member states of the Council of Europe. Lastly, two inquiries made by the Court on two problematic aspects of the case law with regard to the defence of prisoners’ rights need to be recalled: on the one hand the virtual absence of European control over sentencing procedures and access to measures of adjustment of penalties, on the other hand the locus standi of NGOs before it ([more here](#)).

Research-project on access to legal aid and mechanisms for accessing courts for remand prisoners in Europe

PLN, in partnership with ten other partners from nine countries of the EU (Germany, Belgium, Bulgaria, Spain, France, Italy, the Netherlands, Poland, Czech Republic) will launch in September 2017 a project on access to legal aid and mechanisms for accessing courts for remand prisoners in Europe. The project is funded by the European Commission (Justice Programme).

This project aims at:

- reporting on legal aid and mechanisms of institutional and associative support with regard to access to rights and to a lawyer for remand prisoners in the European Union, including public policies in the field.
- carrying out an empirical study on the impact of national mechanisms aiming at giving areal access to courts for remand prisoners.

THE PLN INITIATES AND CONTRIBUTES TO RESEARCH-ACTION PROJECTS AIMING AT PROVIDING ANSWERS TO MOST PROBLEMATIC ISSUES AS REGARD TO ACCESS OF PRISONERS TO THEIR RIGHTS

The project is expected to give impetus to a process of drafting an EU legislation on legal aid with regard to pre-trial detention-related disputes, to provide NGOs and bars with innovative legal tools by enhancing the circulation of modes and means of effective actions met in the nine countries of the research.

The project is coordinated by the CNRS SAGE (University of Strasbourg, **Gaëtan Cliquennois**) and CNRS CESDIP (University of Versailles Saint-Quentin-en-Yvelines), in partnership with PLN, the Universities of Dortmund, Gent, Comillas (Madrid), Utrecht and Florence, the Bulgarian Helsinki Committee, the Helsinki Foundation for Human Rights in Poland and the General Council of Spanish Bars in Brussels.

Outlook in 2017

A project proposal aiming at creating a new research team on prison issues was submitted in March 2017 to the Paris City granting programme “Emergence(s)”

The project, coordinated by the CNRS ISJPS (University of Paris 1 Panthéon) in partnership with PLN, aims at setting up a new research team on prison issues, gathering around 30 academics and practitioners. It takes as a starting point the criticism of contemporary sociology towards the development of prisoners' rights, namely that the promulgation and granting of rights to detainees in a total institution is a formal innovation: human rights would always remain somehow behind the evolution of penitentiary management mechanisms, and would be unable to thwart the security and disciplinary primacy. The aim of the research is to test this criticism by exploring the conditions for the reappropriation by prisoners of their rights, with a view not only of their transcription into norms but also of their real effect in the daily life of prisoners.

Legally centred, the research will on the one hand show by what process a legal issue emerges and integrates a reform process and, on the other hand, it will confront legal texts to concrete practices. According to these different perspectives, it will focus on the protection needs arising from the most contemporary forms of the functioning of the penitentiary system. Three fields of experiments, currently largely left out of the field of prisoners' rights, will be analysed: the architecture of the new prisons, the traceability of behaviours in terms of predictive logics and the neutralization of dangerousness.

Draft research concept note on the European Arrest Warrant (EAW).

The concept note was developed by the Prison Litigation Network and the University of Paris 1 Panthéon (ISJPS). The aim of the research is to analyse conditions under which national courts can ensure a consistent implementation of the EAW by respect of fundamental rights of detained persons in countries facing structural or systemic

problems in prisons. Through the European Union law, it aims at giving more effectivity to ECtHR judgments and to reinforce the real scope of the prohibition of irreducible penalties, topic at the core of PLN mandate. Partners are seeking funding opportunities for the project.

3. LITIGATION

Life sentence

In the **Korolev case** argued by Sutyazhnik and supported by PLN, the Constitutional Court of Russia, by a decision of 17 November 2016, censored the prohibition for life prisoners to access family visiting rooms during the first 10 years of the execution of their sentence. Referring to a 2005 decision, the Court relies on the evolution of the penological objectives and Council of Europe standards which consider that detainees of this category were entitled to a long-term visit (3 days without supervision), in comparison with two days for the others. This decision comes after the European Court condemned Russia in the case of Khoroshenko v. Russia.

PLN submitted a third party intervention in the Grand Chamber case **Huntchinson v. UK** with a view to enabling the Court to specify criteria for decisions of refusal to grant conditional release. A dozen European NGOs joined forces for this intervention. However, the scope of the judgment

of [17 January 2017](#) does not go beyond the scope of British law, in respect of which the Court has shown a very conciliatory approach.

PLN also submitted a comment to the UN Committee Against Torture with regard to the mechanism of life sentence with review after 30 years (paired with major procedural constraints), issued by the French law of 3 June 2016.

Concerning action in respect of access to parole for lifers and convicts serving long-term sentences, PLN intends to work on litigation aiming at bringing the ECtHR to strengthen its control over decisions taken by domestic courts. Active preparation has begun for establishing an international working group gathering practitioners and researchers involved on this topic, in order to explore collectively strategies which could lead to be less exposed to a casuistic approach on the part of European judges. Such strategy needs to reflect in

parallel on ways to prevent the development of a case law heavily based on risk management principles.

Overcrowding

PLN is associated to the Observatoire International des Prisons and the Ligue des Droits de l'Homme Belgium in the third party intervention submitted for the case GC **Mursic v. Croatia**, which it was hoped would lead to the Court to specifying criteria for reviewing conditions of detentions in a context of prison overcrowding. We called the Court to meet requirements of the CPT and to take into account the impact of overcrowding on other aspects of life in detention (access to health, visiting room, etc.). The Court refused to change its case law, but several dissenting opinions could serve as a basis for future action in this regard.

The PLN took in charge a case (K. v. Russia) before the ECtHR, relating to bad conditions of de-

tention (overcrowding, inadequate hygienic facilities...), inadequate condition of detention during transport and the use of security arrangements in courtrooms. The case was communicated on 10 March 2013.

Torture

PLN supports a case against Russia before the ECtHR (L. v. Russia) involving repetitive acts constituting torture (hammer blows, hanging to bars, beatings, humiliations...), absence of investigation following the allegations of torture, bad conditions of detention and lack of medical care.

Access to medical file

A third party intervention was submitted in the case [Sokolow v. Germany](#), which raises the question of the right of detained persons to access their medical file. The third party intervention aims at bringing the Court to take position on the subject of the right to health rather than on the right to access personal data. The aim is to reinforce the requirements in this field and

to make sure that physicians' procedures concerning their patients are necessarily documented and accessible to them, in order to limit as much as possible the participation of doctors in the internal procedures aiming at bringing order in prison.

Freedom of expression and gathering of detained persons

PLN supports a series of actions before the European Court with regard to the prosecution of detainees on account of the collective protest movement against acts of torture and money extortion committed against them. These actions are undertaken under Article 3 (prohibition of inhuman or degrading treatment) but also 10 (freedom of expression) and 11 (freedom of peaceful assembly).

External partnerships (litigation)

PLN has established a partnership with the International Law Clinic on Human Rights of the University of Aix-Marseille. The aim is to work on the legal protection in European law which could benefit detainees who are victims of

retaliation as a result of complaints and on the issue of adjustment of sentences. This would feed the argumentation before the European Court of Human Rights in the field.

**ACADEMICS AND
PRACTITIONERS
SPECIALISED IN
EUROPEAN LAW
WORK TOGETHER
AT DEVELOPING
A PROSPECTIVE
LEGAL ANALYSIS
AIMING AT
DEFINING AVENUES
FOR LITIGATION
ACTION**

ASSOCIATION DEVELOPMENTS

Extension of the Network to 17 collaborating partners

In 2016, PLN has expanded its network to 11 countries of the Council of Europe and established partnerships with 17 non-governmental organisations. A new statute of the association was voted during the General Assembly of June 2016 aiming at reinforcing the role of collaborating partners within the Network.

Participative status with the Council of Europe:

PLN was granted the participating status with the Council of Europe. In particular, holding participatory status will allow PLN to submit a request for entitlement to lodge collective complaints before the European Committee of Social Rights.



Election of a new board and executive bureau of the PLN

During the General Assembly of the PLN, its members have elected the 17 members of its Board. As a result, an new executive Bureau was elected:

Marc Nève, lawyer in Liège, Belgium, member of the Observatoire International des Prisons (OIP) - Belgium and of the Prison commission of the Ligue des Droits de l'Homme (LDH), was elected president of PLN. Marc Nève is the former vice-president of the CPT and regularly brings cases before the ECtHR. In particular, he has obtained decisions on the issue of long sentences (quasi-pilot decision *Bamouhammad v. Belgium*, decision *Trabelsi v. Belgium*)

Simon Creighton and Krassimir Kanev were elected as vice-presidents. Simon Creighton is a solicitor in London and one of the leaders in UK on prison litigation in national jurisdictions and in the ECtHR. In particular, he has carried the case *Vinter v. UK* by which the European Court prohibited sentences with no prospect

of release or possibility of review. Krassimir Kanev is Chairperson of the Bulgarian Helsinki Committee. A former dissident and professor of philosophy, he has chaired the United Nations Fund for Victims of Torture, of which he is still a member. His organization is among the most represented before the ECtHR in prison litigation.

Isabelle Fouchard was elected general secretary. She is a CNRS fellow-researcher and head of the Center on compared law in the Institut des sciences juridique et philosophique de la Sorbonne in University Paris 1 Pantheon Sorbonne. She is also a prison controller in the Contôleur Général des Lieux de Privation de Liberté (CGLPL). She has organised, together with Anne Simon, a series of seminars "Internormativités dans le champ pénitentiaire" (Internormativity in the penitentiary field) in the University of Paris 1.

Guillaume de Lagasnerie was elected as treasurer. He is a charter accountant and auditor. He has previously contributed to the work of the Observatoire International des Prisons - France.

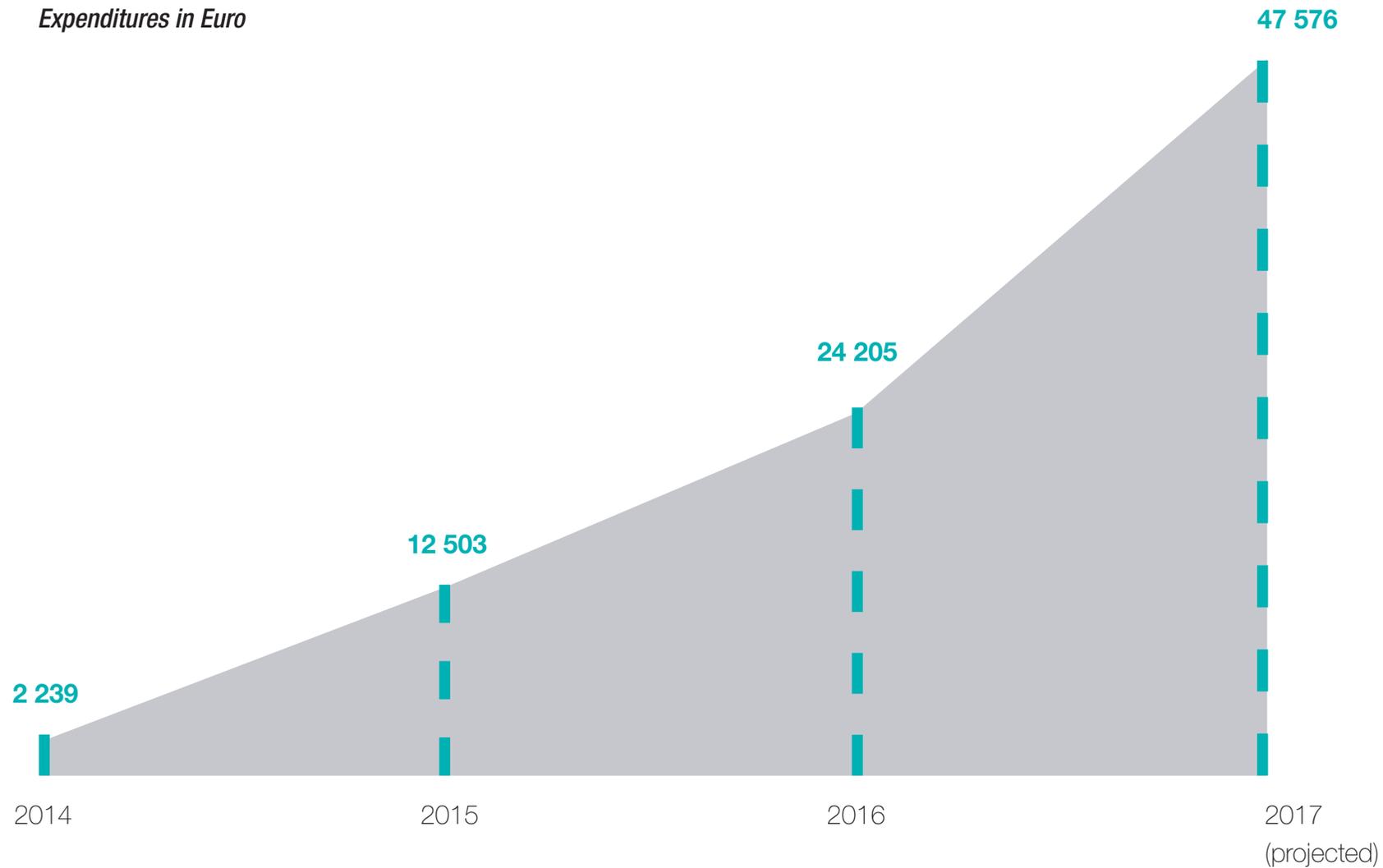
Structure of the PLN Secretariat

With the aim to strengthen its structure and develop its activities, members of PLN have joined efforts to form a Secretariat for the Network. **Hugues de Suremain**, lawyer and former legal director of the Observatoire International des Prisons – France, is taking the responsibility of the Legal Coordination of PLN. **Gaetan Cliquennois**, research fellow at the CNRS of the University of Strasbourg, is the Scientific Coordinator of the Network. **Julia Krikorian**, project manager, mediator and consultant for NGOs in the field of human rights and peace mediation, is taking over the responsibility of the Administrative coordination and Development of PLN. The Secretariat is continuously supported by active members of the PLN for the implementation of its activities.

FINANCIAL OVERVIEW

FINANCIAL GROWTH OF THE ASSOCIATION

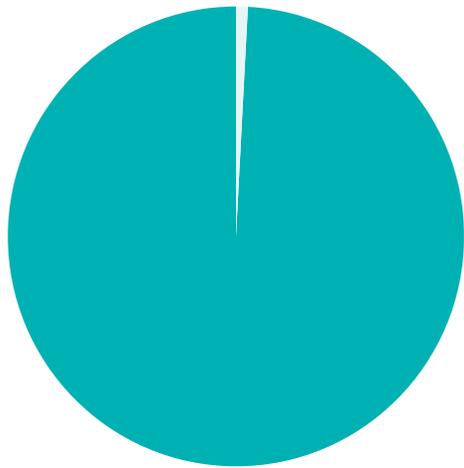
Expenditures in Euro



FINANCIAL OVERVIEW

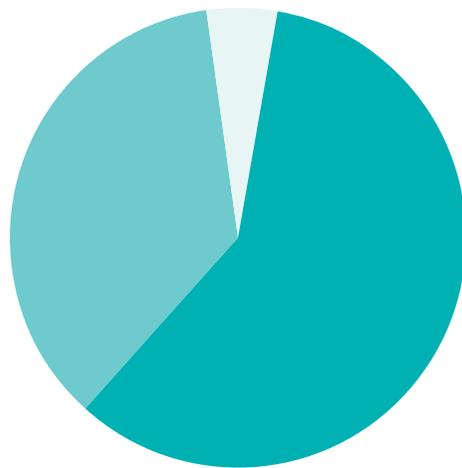
ORIGIN OF FUNDS

2015



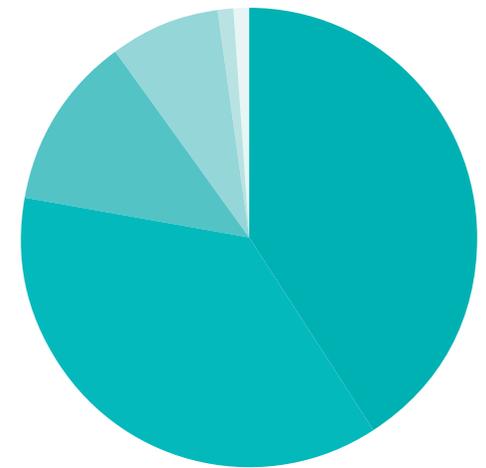
- Paris Bar
- Own Capital

2016



- French Ministry of Foreign Affairs
- Swiss Federal Department of Foreign Affairs
- Paris Bar

2017 (projected)



- French Ministry of Foreign Affairs
- European Commission DG Justice
- Russian Human Rights Network
- Swiss Federal Department of Foreign Affairs
- Paris Bar
- Own Capital

SPECIAL THANKS

To our collaborating partners in

Europe L'altro diritto (Italy), Observatoire International des Prisons - Section française, Observatoire International des Prisons – Belgique, Ban Public (France), Ligue belge des droits de l'homme (Belgium), Grupul Roman pentru Apararea Drepturilor Omului GRA-DO (Romania), Bulgarian Helsinki Committee (Bulgaria), Prisoner's Advice Service (UK), Sutyajnik (Russia), IRIDIA Centre de Defensa de Drets Humans (Spain), Interregional Center of human rights (Russia), Strafvollzugsarchiv eV (Germany), Vereinigung Österreichischer StrafverteidigerInnen (Austria), Promo LEX (Moldova), Legal Basis (Russia), Ural Human Rights Group (Russia), Ural Democratic fund (Russia), Ural Human Rights Defenders (Russia).

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Pénitentiaire

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