

Victory at the Federal Supreme Court

**It's written! The Federal Supreme Court wrote:
detaining a patient in prison to follow a therapeutic program
when he or she is no longer violent,
It's illegal.**

FINALLY, the Federal Court recognises that the “Colonie ouverte” of EPOs is not a therapeutic place for the execution of a measure according to Art. 59 of the Swiss Criminal Code

The Open Colony of the EPOs (Penitentiary Establishments of the Orbe Plain) "does not meet the legal requirements for the execution of an institutional therapeutic measure". This time, it is the Federal Court - the highest judicial authority in Switzerland - that attests to this in a historic judgment opposing a Jura man to the judicial authorities of his canton.

Are the lines finally starting to move? Everything leads us to believe so! In a decision dated 25th October 2025, the Federal Supreme Court ruled in favour of a prisoner who challenged his transfer to the EPO's "Colonie ouverte" for the execution of an institutional therapeutic measure.

A great victory to the credit of Mrs. Kathrin Gruber, the Appellant's lawyer, an SBA specialist in criminal law who has been involved with L'ECART (formerly GRAAP AMPP) for many years.

An exemplary case

In 2018, a man from the Jura who we will call Stéphane was sentenced to a 4-month custodial sentence for minor offences, as well as an institutional measure to treat mental disorders. Four years later, in 2022, Stéphane was still behind bars and his measure was renewed for a period of 3 years.

But given Stéphane's "positive evolution", in 2024, the plan for the execution of the sanction is rearranged with the possibility of transferring him to an open prison environment subject to positive notice from the prison and medical authorities.

A month later, the positive notice is on the desk of the Jura service in charge of the execution of sentences and measures. He orders Stéphane's transfer to the EPO "colonie ouverte". This is immediately disputed by the person concerned.

"A place that does not meet the legal requirements"

Rejected in the first instance, Stéphane filed a new appeal with the Administrative Court of the Cantonal Court of the Republic and Canton of Jura. He requests immediate placement in an

appropriate psychiatric institution or in an institution for the execution of measures. Stéphane also requests, in the alternative, that the therapeutic measure against him be lifted and replaced by outpatient treatment.

His appeal is based on the fact that "the Colonie ouverte does not meet the legal requirements of the Penal Code that the places of execution of therapeutic measures must be separated from the places of execution of sentences; they must be directed by a doctor with duly trained staff and be provided with adequate facilities" (*Art. 59 (2), 58 (2), 59 to 61 of the Criminal Code*).

Failing to win his case with the judicial authorities of his canton, Stéphane appealed to the Federal Court as a last resort.

What the Federal Supreme Court says

In the past, in similar cases, the Federal Supreme Court has often followed the opinion of the cantonal courts, stating that an institutional therapeutic measure can be carried out in a prison if the treatment is provided by qualified staff.

In addition, the law allows the execution of a measure to be carried out in a closed setting, but as long as the person is considered dangerous with "a high risk of recidivism or absconding" and always in an appropriate establishment according to article 59 of the Criminal Code.

A variable geometry of dangerousness

Nothing like that with Stéphane. The federal judges considered that the decision of the Jura Court was based on "a somewhat ambiguous legal basis". Indeed, in the same judgment, the said court justified Stéphane's placement in a secure environment under Article 59 (3) of the Criminal Code by "very high" risks of recidivism assessed in June 2023, while considering that his transfer to the Open Colony made it possible to curb these risks in view of its favourable development.

According to the federal judges, "the considerations of the Administrative Court (of the Jura Cantonal Court) do not make it possible to understand whether, according to its analysis, it is still highly probable that the convicted person will commit further offences against essential legal assets as required by federal case law".

In other words, is Stéphane a little, a lot, not at all dangerous? You should know! Translated into legal language, this reads: "If the previous authority intended to base the Appellant's placement in the Open Colony on Art. 59 (3) SCC, it had to carry out a reasoned analysis of the importance of the risk of recidivism," the Federal Tribunal noted.

The fight continues

Consequently, in its judgment of October 7, 2025, the Federal Tribunal ruled in favour of the Appellant. The Jura authorities will have to examine whether the conditions for exceptional placement in a secure environment are met and, if not, they will have to proceed with "the placement of the Appellant in an appropriate psychiatric institution or in an institution for the execution of measures". The latest news is that the canton of Jura is preparing to transfer Stéphane to a suitable care facility, before the hoped-for lifting of the measure. Indeed, in the absence of an adequate establishment, the law states that the measure must be lifted.

Of course, comparison is not reasonable, each case is based on a constellation of considerations and the fight is far from won. Let us recall the case of Christian ([Collectif 59 Christian Affair](#)) As we reported in the AMPP newsletters, Christian, also detained at the EPO Colonie ouverte and defended by Kathrin Gruber, had appealed to the Federal Court on the same grounds as Stéphane. But in this judgment of the [arrêt du 29 nov. 2022](#), the High Court

had considered that the appeal was not sufficiently substantiated on the very question of the appropriate places for the execution of an institutional therapeutic measure according to Art. 59. The same lawyer had raised the same reasons!

So yes, the fight continues. However, despite the twists and turns of the law and its interpretations, the judgment of 7 October 2025 enshrines in capital letters in Swiss case law the observation that prison is not an appropriate place for the treatment of mental disorders according to Article 59 of the Criminal Code.

Catherine Favre

The verdict of the Federal Court in six excerpts:

- "The Colonie ouverte of the EPO (Prisons of the Plaine de l'Orbe) is not a place dedicated to the execution of institutional therapeutic measures (cf. Art. 59 para. 2 SCC). It is an open establishment dedicated to the execution of custodial sentences, within the meaning of Art. 76.»
- "As the Appellant rightly points out, such an establishment does not comply with the requirement of separation of the places of execution of therapeutic measures and the places of execution of sentences provided for in Art. 58 (2) SCC. Nor does it by nature meet the conditions laid down by the special rule of Art. 59 (3) SCC, since the latter presupposes that placement in a secure environment is necessary in order to prevent a risk of flight or the commission of new offences."
- "It follows that the regime applied to the Appellant by the Enforcement Service, namely placement in an institution for the execution of sentences opened for the purpose of executing a therapeutic measure for the treatment of mental disorders, has no legal basis. On this point, the previous authority misunderstands the scope of the judgment."
- "It follows that it is contrary to the legal regulations that the Administrative Court (of the Cantonal Court of the Republic and Canton of Jura) placed the Appellant in the Open Colony for the purpose of carrying out his therapeutic measure for the treatment of mental disorders. The complaint is well founded."
- "In conclusion, the appeal must be admitted and the judgment of the Administrative Court of 24 February 2025 annulled. The case must be remitted to the Appellant to examine whether the conditions for exceptional placement in a secure environment are met — in which case only a closed institution or the closed section of an open institution would be relevant — and, if not, to place the Appellant in an appropriate psychiatric institution or in an institution for the execution of measures. »
- "The Appellant, who wins his case with the assistance of a professional representative, is entitled to an indemnity for costs to be paid by the Canton of Jura."

The paradoxes of the law pointed out by a committed lawyer

As a committed woman in the field, Kathrin Gruber has brought the appeals of many prisoners sentenced to institutional therapeutic measures to the European Court of Human Rights.

Through the case of Stéphane, she deciphers the main paradoxes of Article 59, in particular in the case of the transfer of prisoners from a closed to an "open" prison setting, following the

example of the EPO Open Colony: "The Criminal Code," the lawyer recalls, "says that the placement of a person sentenced to an institutional therapeutic measure in prison is only possible if the person is considered dangerous and must be placed in a prisons closed establishment, or when it presents an imminent risk of flight or recidivism of violent offences. In addition, the necessary therapeutic treatment must be provided by qualified personnel. However, these conditions were not met for Stéphane, since the authority responsible for the execution of sentences admitted that he could be placed in an open establishment. In such a case, the law does not provide for the placement of persons sentenced to institutional therapeutic treatment in a penitentiary institution, but "in an appropriate psychiatric institution or in an institution for the execution of measures".

As we have reported, the Federal Supreme Court, in its decision of 7 October 2025, admitted "that such an establishment (editor's note: the Colonie ouverte) does not comply with the requirement of separation of the places of execution of therapeutic measures and the places of execution of sentences", provided for by law.

"A foundation to build on"

For Kathrin Gruber, "this decision constitutes a basis on which to rely to demand the release of patients from the penitentiary environment. The progression from the closed to the open framework within a prison is intended for people who are serving a sentence and not for those who are carrying out a measure. The enforcement authorities tend to forget this. For people under measure, the progression is not planned as far as establishments are concerned, but only as far as therapeutic modalities are concerned, which is rarely applied due to a lack of resources. »

Gruber continues: "The need for a framing structure does not mean 'prison' as the prison authorities interpret it. According to the experts, placement in prison offers little possibility of therapeutic development and is likely to further degrade the mental health of the persons concerned.

It follows that not all persons currently placed in an open prison can be placed in a closed establishment because they are not sufficiently dangerous, since they have been placed in an open environment. They must necessarily be placed in an appropriate institution for the execution of measures. This is what is looming for Stéphane: the canton of Jura is preparing to transfer it to a suitable care facility, before the hoped-for lifting of the measure. In the absence of an adequate establishment, the law provides that the measure must be lifted. »

And the lawyer concludes: "Perhaps we should consider more the application of the law that provides for the lifting of the measure when there is no or no longer an adequate institution or when the measure is doomed to failure, especially when the sentence is largely served?"

Next victories?

- 1) Creation of secure specialised care facilities outside prison,
- 2) Deletion of paragraph 3 of [Article 59 of the Criminal Code](#), which authorises the detention in prison of patients with mental disorders under therapeutic measures.

With you, it's possible!