



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
23 April 2021

Original: English

Committee on Enforced Disappearances Twentieth session

Summary record of the 342nd meeting*

Held via videoconference on Thursday, 15 April 2021, at 12.30 p.m. Central European Summer Time

Chair: Mr. Ayat

later: Mr. Diop (Vice-Chair)

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* No summary record was issued for the 341st meeting.

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The meeting was called to order at 12.35 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Switzerland (continued) (CED/C/CHE/1; CED/C/CHE/Q/1; and CED/C/CHE/RQ/1)

1. *At the invitation of the Chair, the delegation of Switzerland joined the meeting.*
2. **Mr. Baati** (Country Rapporteur) said that he understood from the replies to the list of issues (CED/C/CHE/RQ/1, para. 45 (d)) and article 130 of the Code of Criminal Procedure that, although persons deprived of their liberty were obliged to have a lawyer, they could, in fact, go for as long as 10 days without legal assistance. It would be useful to have an account of the legal conditions under which defence counsel was assigned. He wished to know whether pretrial detention orders were issued by judges; if so, it was difficult to understand how an accused person could be brought before a judge without the presence of a lawyer. He would also welcome further details on the right of an accused person's lawyer to request a court to rule on the lawfulness of the deprivation of liberty (CED/C/CHE/RQ/1, para. 46).
3. It would be helpful if the delegation could elaborate on the requirements that must be met in order for victims to receive compensation and/or moral reparation, particularly the requirement that the highest degree of probability that the person was a victim must be established (CED/C/CHE/RQ/1, para. 60), especially since, according to the State party, filing a complaint that led to the institution of criminal proceedings was not a prerequisite for obtaining compensation and/or moral reparation under the Federal Act of 23 March 2007 on the Provision of Support to Victims of Crime (Victim Support Act) (CED/C/CHE/RQ/1, para. 55).
4. In addition, it was his impression that the requirements for obtaining a declaration of absence were stringent to the point that they were arguably at variance with the spirit of the Convention. He questioned whether, in cases involving disappeared persons who had left children behind, such requirements would be compatible with the best interests of the child. He would welcome an explanation of the statement to the effect that establishing the conduct described in article 25 (1) (a) of the Convention – the wrongful removal of children – as a separate offence was not necessary, as it would only have symbolic value (CED/C/CHE/RQ/1, para. 68).
5. While it was true that the issues relating to the adoption of children from Sri Lanka had arisen before the State party had ratified the Convention, he wished to recall that Switzerland had a duty to uphold the right to the truth enshrined in it and should therefore make every effort to resolve the matter. Switzerland had the diplomatic, financial and technical means necessary to help heal wounds and end the suffering caused by past events. Of the adopted children who had formed a network, only 11 had been able to find their biological families. He noted with interest that the report of the Federal Council in response to the Ruiz postulate (No. 17.4181), which addressed the illegal adoption of children from Sri Lanka in Switzerland in the 1980s, contained recommendations that should be followed at the federal and cantonal levels. He would welcome more information on the Ruiz postulate (No. 17.4181) and its implementation. It would also be useful to learn more about the baby boxes referred to in the written replies (CED/C/CHE/RQ/1, para. 70). He wished to know what was being done to ensure that, once a child who had been left in a baby box became an adult, he or she could find his or her biological parents. The delegation might also wish to comment on confidential births at hospitals.
6. **Mr. de Frouville** (Country Rapporteur) said that the National Commission for the Prevention of Torture and the Subcommittee on Prevention of Torture had both raised concerns following a study carried out in 2017 by Mr. Walter Kälin and Mr. Manfred Novak on the independence and the resources available to the national preventive mechanism. He wished to know whether the State party was planning to take up the Commission's recommendation that the national preventive mechanism should be part of the national human rights institution rather than be placed under the administrative authority of the Federal Department of Justice and Police. In its reply to the recommendations put forward by the Subcommittee following its visit to Switzerland in 2019, the Commission had stated that it

wished to see greater alignment between the Government's public statements and the national reality, particularly with regard to the funds allocated to the national preventive mechanism.

7. Concerning the issue of access by persons deprived of their liberty to a lawyer, the State party suggested two possibilities: the legal counsel of the accused could appeal to a court in order for it to rule, without delay, on the lawfulness of the deprivation of liberty; and, in suspected cases of enforced disappearance, relatives must file a report of a criminal offence to initiate such proceedings. In such cases, the criminal prosecution authority must then establish whether there was reason to believe that a case of enforced disappearance had occurred and, therefore, whether the deprivation of liberty was unlawful (CED/C/CHE/RQ/1, paras. 46 and 47). He would like to know what measures were in place to ensure that the procedure for determining whether a case of enforced disappearance had occurred was carried out without delay.

8. The issue of communication of information on persons deprived of their liberty, which was taken up in articles 17, 18 and 20, was central to the Convention. Under article 214 of the Code of Criminal Procedure, a criminal justice authority could refuse to transmit information if the purpose of the criminal investigation precluded it or the person concerned raised objections. He wished to recall that article 20 (2) of the Convention enshrined the right to a prompt and effective judicial remedy as a means of obtaining information.

9. He would like to know whether appeals to the Federal Administrative Court could be described as "prompt and effective" and whether such remedies could be suspended or restricted in exceptional circumstances. In its 2015 report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had expressed concerns that there were regular delays in the provision of information to relatives as a result of decisions taken by police officers if they suspected that there was a risk of collusion. He would be grateful if the delegation could comment on those concerns.

10. Turning to the questions raised about compensation for victims, he wished to point out that, in cases where an offence was committed abroad, counselling services were offered only if the victim was domiciled in Switzerland at the time of the offence and at the time of submitting the application. It was therefore unclear whether a victim of enforced disappearance who was found and ultimately released, and who obtained asylum in Switzerland, would be eligible for such services.

11. He concurred with Mr. Baati that the rules governing the issuance of declarations of absence were not in keeping with the spirit of the Convention, since it was necessary for the death of the disappeared person to appear very probable. However, enforced disappearance did not necessarily entail life-threatening situations: it could take the form of an arrest by the police or the army. Furthermore, a person could be disappeared and kept in detention for years without danger of death. He wondered whether the State party might consider revising the above-mentioned rules to make them more consistent with the spirit of the Convention.

12. He wished to emphasize that, in the December 2020 report of the Federal Council on illegal adoptions of children from Sri Lanka in Switzerland in the 1980s, the Council had acknowledged the, in some cases, long-standing failings of the Swiss federal and cantonal authorities and had expressed its regret for the harm caused to adopted persons and their families. The following aspects of the outcome of the report were particularly worth highlighting: the creation of a working group made up of representatives of the Confederation, the cantons, adopted persons and private partners to support adopted persons in researching their origins; and the establishment of a group of experts to carry out an in-depth analysis of the Swiss intercountry adoption system and to propose solutions, including legislative reforms.

13. He would therefore like to hear more about the measures envisaged to ensure that adopted persons could learn the truth about their origins and to know whether the State party had considered establishing an independent specialized service that could facilitate the tracing process while providing psychological support to victims. It would be interesting to learn about any cooperation with Sri Lanka in researching the origins of the victims concerned in the light of articles 15 and 25 (3) of the Convention. He also wondered whether further remedies for the victims were envisioned.

14. The report seemed to refer to the *ratione loci* limits of the Victim Support Act and to conclude that the conditions laid down by the Act had not been met at the time of the criminal conduct in Sri Lanka. However, it appeared that, in some cases, the offence had continued in Swiss territory due to the actions of intermediaries and the negligence of responsible authorities. Although the report seemed to rule out criminal involvement by citing abduction offences and the statute of limitations, there were adoptions that could well constitute cases of enforced disappearance. In such cases, the statute of limitations would be suspended until the crime no longer existed or, in other words, until the denial or concealment had ceased and the identity of the disappeared child had been restored.

15. Lastly, the Federal Council had established that only legal writings, not sanctioned by jurisprudence, would allow for a finding of nullity of an adoption as a result of criminal activities, after the legal period of two years had elapsed. It thus recognized that there was a possible gap in the law in that respect. He wondered whether there were currently any plans for legislative reform in that area.

The meeting was suspended at 12.55 p.m. and resumed at 1.10 p.m.

16. **Mr. Gramigna** (Switzerland) said that the dispatch of the Federal Council concerning the Federal Act of 20 March 2009 on the National Commission for the Prevention of Torture assumed that the Commission would carry out 20 to 30 visits to places of deprivation of liberty per year. Once established, the Commission had been provided with a permanent secretariat and an annual budget that had increased each year in accordance with the new tasks that it had taken on, including monitoring the enforcement of removal orders and inspections of federal asylum centres. The secretariat currently had a budget of almost 1 million Swiss francs. The costs of rent and information and communication technology support were not charged to the Commission. The costs of visits must be paid out of the existing budget. The Commission decided independently how it would use its financial resources and how many visits it would conduct. The Commission's budget was currently managed within the framework of the overall budget of the Federal Department of Justice and Police.

17. **Ms. Zermatten** (Switzerland) said the fact that the Commission came under the authority of the Federal Department of Justice and Police also had its advantages, as it could benefit from its financial and human resources, including language resources. As had been found in the study mentioned by Mr. de Frouville, the fact that the Commission was attached to the Department had not led to problems related to law enforcement. Furthermore, the Department had received no indication from the Commission that its attachment to it had compromised the Commission's financial independence.

18. Turning to the question raised at a previous meeting concerning the situation in prisons during the coronavirus disease (COVID-19) pandemic, she wished to reassure Committee members that visits had resumed in most places of detention and that safety measures had been put in place. The cantons had made every effort to ensure that detainees remained in contact with the outside world, whether through videoconferencing, extended visiting hours or free use of the telephone. During the first and second waves of the pandemic, lawyers, external doctors and diplomatic personnel had been guaranteed access to places of detention, even in lockdown situations.

19. **Mr. Gonin** (Switzerland), summarizing the information contained in paragraph 49 of the written replies ([CED/C/CHE/RQ/1](#)) on access to a lawyer from the time of apprehension, said that the period of apprehension could not exceed three hours. The conditions under which coercive measures could be taken were set out in the Code of Criminal Procedure ([CED/C/CHE/1](#) para. 97). There was an obligation to lift such measures as soon as even one of those conditions ceased to be met.

20. In addition to basic procedural guarantees, such as the right to a lawyer, which served to strengthen judicial control over the lawfulness of any detention, close friends or relatives could also appeal to the courts if they had doubts over the lawfulness of such coercive measures. Thus, the remedies that had been mentioned by Mr. de Frouville were subsidiary mechanisms. In practice, the simplest way for a public prosecutor to determine the legality of a detention was to contact the legal authority that had authorized the coercive measure. It should be emphasized that the entire criminal justice system, including the public

prosecutor's office, had an obligation to act swiftly and there were very few problems on that score in Switzerland.

21. He wished to assure the Committee that no one could spend 10 days in pretrial detention without having access to a lawyer. In paragraph 45 of the replies to the list of issues ([CED/C/CHE/RQ/1](#)), a distinction had been drawn between the right to a legal counsel and the obligation to have a defence counsel. An accused person had the right to legal counsel from the outset of his or her detention, and was duly informed of that right upon arrest. That right became an obligation when the period that the accused had spent in pretrial detention, including the duration of his or her arrest, had exceeded 10 days.

22. Under article 214 of the Code of Criminal Procedure, the right of a person with a legitimate interest to receive information about a person deprived of his or her liberty could be restricted in certain cases. For example, the information could be withheld from close friends or relatives if there was a real risk of collusion. However, non-disclosure of information was a coercive measure and, thus, had to meet the relevant conditions ([CED/C/CHE/RQ/1](#), para. 50).

23. **Ms. Schickel-Küng** (Switzerland) said that a number of measures were being taken in follow-up to the report published by the Federal Council on illegal adoptions of children from Sri Lanka in Switzerland in the 1980s. The first area of work involved conducting historical investigations into adoptions of children from other countries that had taken place during the same era; the second involved reforming the intercountry adoption system and the relevant legislation. The group of experts established for that purpose had a broad mandate that included determining the grounds for the annulment of adoptions and the conditions of access to assistance for victims. The third area of work involved supporting adopted persons in tracing their biological origins. The working group created to that end had a mandate to determine whether DNA testing could be used for that specific purpose and, if so, how much it would cost; how adoptions stemming from illegal practices should be dealt with; and whether a national centre or other body should be established to provide support to adopted persons. In the meantime, information offices were available in all 26 cantons, through which adopted persons could seek support in tracing their origins and gain access to advice and counselling services.

24. Regarding cooperation with Sri Lanka, both Switzerland and Sri Lanka were now States parties to the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and a Memorandum of Understanding had been signed by the two countries in order to facilitate requests by adopted persons researching their origins. A number of cases had already been sent to Sri Lanka at the request of the adopted persons concerned. Adoptions from that era could not collectively be termed as cases of enforced disappearance. Although the existence of individual cases of enforced disappearance could not be discounted, ultimately, it could only be determined by assessing the facts of every case. For that reason, efforts were being focused on supporting all adopted persons – irrespective of the circumstances of their adoption – in tracing their origins. She wished to emphasize that the country's criminal justice response had been strengthened since the 1980s, and that strict rules and safeguards governing intercountry adoptions had been put in place to ensure not only that the child concerned was not a victim of enforced disappearance but also that the adoption was not the result of any illegal activity.

25. **Ms. Sangiorgio** (Switzerland) said that victims and close friends or relatives were entitled to apply for immediate and longer-term assistance, compensation and reparation for moral damage under the Victim Support Act. Evidence of the person's status as a victim was required. The level of proof was higher for longer-term assistance and greater still for claims for compensation and moral reparation. While the existence of criminal proceedings was helpful in proving a person's status as a victim of an offence of enforced disappearance, victims were not obliged to file a criminal complaint. Other means of proof were accepted. The Victim Support Act was based on the territorial principle, meaning that applications for compensation and reparation for moral damage were considered provided that the crime had occurred in Switzerland ([CED/C/CHE/RQ/1](#) paras. 56–60).

26. **Mr. de Frouville** said that the delegation might provide examples to demonstrate the promptness of remedies to challenge the legality of detentions. He would also like to know

whether the delegation considered appeals filed with the Federal Administrative Court to challenge the non-disclosure of information under article 214 of the Code of Criminal Procedure to be in line with the Convention and whether such appeals provided a prompt and effective resolution. He wondered whether the assistance provided for under the Victim Support Act was available to refugees in Switzerland who had been subjected to enforced disappearance abroad. He would also welcome information on any investigations being conducted by the State party to ascertain whether any illegal adoptions of children in the 1980s had involved the offence of enforced disappearance.

27. **Mr. Baati**, welcoming the State party's frankness about illegal adoptions from Sri Lanka in the 1980s, said that he would welcome further information on the plans to reform the intercountry adoption system and to know whether the use of baby boxes in the State party was also being assessed as part of that process.

28. **Ms. Lochbihler** said that she wished to know whether the working group set up to support persons in researching their origins included experts in Sri Lanka, when it was likely to decide on the use of DNA testing and the possible establishment of national or cantonal centres to support adopted persons in their research and whether it had considered the resources, expertise and capacities of the individual cantons in the course of its deliberations.

29. **Mr. Diop** said that he wished to know whether there were specific provisions allowing the National Commission for the Prevention of Torture to gain unrestricted access to all places of deprivation of liberty and whether the Commission was able to carry out unannounced visits and inspections.

30. **Mr. Gonin** (Switzerland) said that, following a detailed legal analysis of the issue, it had been decided that establishing the conduct related to the wrongful removal of children described in article 25 (1) (a) of the Convention as a separate offence would have only symbolic value, and was thus unnecessary, because the different aspects of that conduct were already covered by, and prosecutable under, the Criminal Code. The independence of the judicial authorities was guaranteed in law and in practice, thereby ensuring that there could be no impunity for such acts. The severity of individual offences, which was often deemed to be greater if the perpetrator was an agent of the State, was taken into account during sentencing.

31. Examples of the effectiveness of remedies to challenge the legality of detentions could not be provided at that time, since, to date, no complaints of alleged enforced disappearance had been received by the public prosecutor's office. Concerning the obligation to investigate any suspected cases of enforced disappearance, including in connection with the intercountry adoptions of the 1980s, he wished to underscore that any offences of enforced disappearance would be prosecuted *ex officio* and that, in accordance with the principle of independence of the prosecuting and judicial authorities, the executive could neither obstruct an investigation nor order one to be opened.

32. **Mr. Frank** (Switzerland), summarizing the information contained in paragraph 108 of his country's initial report (CED/C/CHE/1), concerning remedies to appeal the decisions of the federal coordination service, said that the proceedings of the Federal Administrative Court were conducted in writing and that decisions could be issued within a matter of days, or could take longer, depending on the complexities of the case in question. More information on the matter could be provided to the Committee in writing.

33. **Ms. Sangiorgio** (Switzerland) said that the Victim Support Act would not apply in cases where an offence had been committed abroad unless the victim already had established links to Switzerland prior to the offence. Consideration had been given to the situation of refugees who had been subjected to enforced disappearance during their journey to Switzerland. However, the Swiss Government had decided against amending the Act, since the territorial principle was a central element of it. Those persons would, however, be eligible for other forms of support.

34. **Ms. Schickel-Küng** (Switzerland) said that the Swiss Government was highly sensitive to the ethical and legal issues surrounding the use of baby boxes. It was of the view, however, that such boxes should not be banned, since they protected the child's right to life, which took precedence over the child's right to know his or her true identity. Fears that the

availability of baby boxes would lead to an increase in the number of women giving birth in secret, without medical assistance and without declaring the birth, had proved unfounded. While giving birth in secret was illegal, it was possible for a mother to request a confidential birth in hospital, which entailed excluding identifying information about the child's biological parents from the adoption file. The Federal Civil Status Office had issued instructions to the cantons outlining the procedure to be followed in such cases. She wished to point out that the group of experts mentioned by Mr. Baati had been tasked with reviewing intercountry adoption procedures, and thus the use of baby boxes in Switzerland was not covered.

35. No criminal complaints had been received from adopted persons that might prompt an investigation into whether any illegal adoptions from the 1980s had involved the offence of enforced disappearance. For that reason, emphasis had been placed on providing mutual assistance and supporting research about adopted persons' origins. As for the question of whether a national centre or other body should be established to support adopted persons in their research, she noted that organizations representing adopted persons from Sri Lanka had expressed a preference for a national centre, which ought to be neutral and independent. The working group set up to support persons in researching their origins did not include experts from Sri Lanka. That was because its mandate was not limited to illegal adoptions from that country. That being said, discussions were under way between the cantonal authorities, the Sri Lankan authorities and adopted persons with a view to cooperation on that front.

36. The group of experts tasked with carrying out an in-depth analysis of the Swiss intercountry adoption system was not expected to reinvent the wheel but to complement the efforts already being made to tackle illegal adoptions at the international level – most notably by the Hague Conference on Private International Law. Lastly, while the Committee's concerns regarding declarations of absence had been well noted, such declarations were issued for the purpose of enabling victims' family members to gain access to social assistance or to resolve civil, administrative or family matters, such as succession rights. Changes in that regard were not currently envisaged.

37. **Ms. Zermatten** (Switzerland) said that, pursuant to article 8 (2) of the Federal Act of 20 March 2009 on the National Commission for the Prevention of Torture, the Commission had unrestricted access to all places of deprivation of liberty, as well as to information about persons deprived of their liberty, including their medical files, and was able to conduct unannounced visits. The same right was also extended to international and cantonal monitoring bodies.

38. **Mr. Gonin** (Switzerland) said that, in its 2016 replies to the 2015 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Swiss Government had confirmed that the right to information concerning a person deprived of his or her liberty was guaranteed from the moment of arrest, in accordance with article 214 et seq. of the Code of Criminal Procedure. He wished to emphasize that information was always provided, even if there was sometimes a few hours' delay in its transmission.

39. *Mr Diop (Vice-Chair) took the Chair.*

40. **Ms. Ciceron Bühler** (Switzerland), thanking Committee members for what had been a constructive and interactive dialogue, said that Switzerland took its international commitments seriously and was determined to participate in efforts to combat the phenomenon of enforced disappearance nationally and internationally. Thankfully, her country had no recorded cases of enforced disappearance; nevertheless, it had striven to find practical solutions to comply with the Convention, such as the use of fictitious cases as a means of testing the network set up to search for possible victims of enforced disappearance. In that connection, the Committee's concerns regarding the appropriateness of the six-day deadline for providing information through that network would be taken into account during the next test.

41. One of the major issues covered during the dialogue had been the report of the Federal Council on illegal adoptions of children from Sri Lanka in Switzerland in the 1980s. She wished to emphasize that Switzerland took the matter extremely seriously. Adoptions from that era could not be collectively labelled as instances of enforced disappearance; however,

it could not be ruled out that individual cases might have involved that crime. For that reason, the Swiss Government was making every effort to support adopted persons in discovering the truth about their origins and was taking measures to ensure that illegal adoptions could never happen again. Concerning persons deprived of their liberty, she wished to underscore that secret places of deprivation of liberty did not exist in Switzerland, that all detainees had the right to have the lawfulness of their detention reviewed by a judge, and that close friends or relatives had the right to information about a detained person and to appeal the decisions of the above-mentioned network.

42. Her country's efforts to combat the phenomenon of enforced disappearance at the international level included consistently promoting the ratification of the Convention in the context of the universal periodic review process and supporting countries with a history of enforced disappearance. In that connection, Switzerland was launching a joint cooperation initiative with Mexico, aimed at strengthening the Mexican authorities' capacity to search for disappeared persons by providing them with training in forensic anthropology and analysis of drone images.

The meeting rose at 2.25 p.m.