



**Convention on the Elimination
of All Forms of Discrimination
against Women**

Distr.: General
29 November 2024
English
Original: French
English, French and Spanish only

**Committee on the Elimination of Discrimination
against Women**

**Information received from Switzerland on follow-up to the
concluding observations on its sixth periodic report***

[Date received: 27 November 2024]

* The present document is being issued without formal editing.



I. Mandate

1. Switzerland ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1997 (Systematic Compilation of Federal Legislation (SR) No. 0.108). Since then, it has been required to report periodically on progress and challenges in implementing the Convention. In October 2022, Switzerland submitted its sixth periodic report on the implementation of the Convention to the Committee on the Elimination of Discrimination against Women. In its concluding observations of 31 October 2022, the Committee asked Switzerland “to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 16 (a), 32 (a), 42 (d) and 42 (f)”.¹ The recommendations relate to judicial capacity-building on the direct application and use of the Convention in legal proceedings (recommendation 16 (a)), the need to eliminate cantonal discrepancies in funding for the implementation of women’s rights and gender equality and to ensure that each canton has a gender equality office (recommendation 32 (a)), amending the definition of rape and other sexual offences (recommendation 42 (d)), and amending the rules for hardship cases in the event of domestic violence (recommendation 42 (f)).

II. Judicial capacity-building on the direct application and use of the Convention in legal proceedings

2. The federal authorities consider the Convention to be essentially programmatic in nature. Accordingly, in 1995, the Federal Council, in a dispatch on the Convention, referred to the case law of the Federal Supreme Court on the interpretation of international treaties and stated that, in its view, the provisions of the Convention were not, for the most part, directly applicable.² In 2006, it reiterated that position in a dispatch on the adoption of the Optional Protocol to the Convention.³

3. While the Federal Supreme Court does not call into question the justiciability of civil and political rights, including those set forth in the International Covenant on Civil and Political Rights (SR No. 0.103.2), it has reservations about the direct applicability of economic, social and cultural rights. Accordingly, it has consistently held that the provisions of the International Covenant on Economic, Social and Cultural Rights (SR No. 0.103.1) do not, in principle, confer rights on individuals that can be invoked in court.⁴ This also applies to the Convention.⁵ According to the Federal Supreme Court, the obligations deriving from the Convention are general in nature and leave the choice of means up to the States parties; the provisions of the Convention do not, therefore, give rise to subjective and justiciable obligations of non-discrimination against women. At the same time, the Federal Supreme Court has

¹ Concluding observations on the sixth periodic report of Switzerland, para. 72.

² Federal Council dispatch of 23 August 1995 concerning the Convention, Federal Gazette No. 1995 IV 869, p. 895. According to the Federal Council, the Federal Supreme Court may declare certain parts of articles 9 and 15, as well as articles 7 and 16, directly applicable (*ibid.*).

³ Federal Council dispatch of 29 November 2006 concerning the adoption of the Optional Protocol to the Convention on 6 October 1999, Federal Gazette No. 2006 9253, p. 9279.

⁴ See in particular Federal Supreme Court judgment 135 I 161, recital 2.2.

⁵ See for example Federal Supreme Court judgment 139 I 257, recital 6, or Federal Supreme Court judgment 9C_737/2019 of 22 June 2020, recital 5. See also Erika Schläppi, Silvia Ulrich and Judith Wytenbach, *Kommentar zum Übereinkommen der Vereinten Nationen zur Beseitigung jeder Form von Diskriminierung der Frau*, Bern, 2015, part 2 A, chap. 24.

asserted that the provisions are not mere moral or political injunctions, but in fact form part of the actual legal order.⁶

4. The Federal Supreme Court views the Convention as a complement to article 8, paragraph 3, of the Federal Constitution (SR No. 101) and a concrete expression of that “broadly formulated mandate for equality”.⁷ Like the Federal Supreme Court, the Federal Administrative Court notes in its case law the importance of the standards of the Convention for interpreting domestic law in a manner that is compliant with international law, but goes on to specify that those standards are primarily aimed at the legislative, political and social institutions of Member States. Accordingly, it is not up to the Court to deal with alleged violations, but up to lawmakers, politicians and society.⁸

5. The practice of the federal authorities presented above has already been singled out by the Committee in its recommendations of 2003, 2009 and 2016. With respect to the most recent recommendation, the Federal Office for Gender Equality initially informed the Federal Supreme Court and the cantonal courts, as well as the Swiss Judges’ Association. In preparation for the present interim report, the Office then surveyed the Federal Supreme Court, the Swiss Judges’ Association, the Conference of Cantonal Justice and Police Directors, the Foundation for Continuing Education of Swiss Judges and the Swiss Bar Association on the incorporation of the Convention into continuing education offerings and on its importance in practice, i.e. in case law.⁹ On the basis of the responses received, we can report the following:

6. In Switzerland, initial training and continuing education for those working in the justice system is structured in different ways depending on the profession and the canton. In order to work in the justice sector, individuals usually need to have studied law. Swiss law schools teach students about gender equality, how it is enshrined in constitutional and international law, and the resulting legal situation. However, there is no initial training or continuing education for legal professionals focused specifically on the Convention.

7. In the prosecution services, the issue of equality is addressed in specific continuing education courses, as well as during amendments of the legal basis of criminal law. Given that the law on sexual offences is currently being revised, members of the prosecution services are paying increased attention to the issue.¹⁰ During their initial training, trainee police officers are made aware of equality issues and the importance of international conventions such as the Convention on the Elimination of All Forms of Discrimination against Women. In addition, they have the option to take continuing education courses on various types of discrimination, including gender stereotyping. In Switzerland, there are no continuing education courses on equality aimed at judges or lawyers. However, professional associations, universities, universities of applied sciences and cantonal training centres regularly hold study days and legal conferences, which may be focused on topics related to equality and may provide an opportunity to highlight the importance of the Convention.

⁶ Federal Supreme Court judgment 137 I 305, recital 3.2. As an example of an article setting out specific measures for substantive equality of women, the Federal Supreme Court cited art. 11, para. 2, of the Convention, which covers protection against dismissal, paid maternity leave and childcare facilities.

⁷ Federal Supreme Court judgment 137 I 305, recital 3.2.

⁸ Federal Administrative Court judgment F-4997/2022 of 10 November 2022, recital 6.3.

⁹ The Federal Supreme Court declined to answer the second question, citing its judicial independence in matters of jurisprudence.

¹⁰ See ch. 4.

8. It is worth mentioning the minimum standards for initial training and continuing education for members of the legal profession and the police, drawn up by the Federal Office for Gender Equality in partnership with other federal agencies, the cantons and civil society under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (SR No. 0.311.35).^{11, 12} These standards set out the relevant competencies required by members of the legal profession and the police in relation to gender-based, sexualized and domestic violence. The minimum standards are aimed at educators in law schools and faculties, universities of applied sciences, police academies and the Swiss Police Institute. They are also aimed at individuals working for the adult and juvenile prosecution services, the courts, the child and adult protection services, law firms and the police.

9. With regard to the relevance of the Convention in practice, the Swiss criminal prosecution authorities do not consider it to be a priority in their field of activity in comparison with other international treaties, insofar as the objectives of the Convention are not primarily a matter for criminal law.¹³ Generally speaking, case law does not usually refer directly to the Convention, but rather to the corresponding provisions of domestic law (see *supra* case law of the Federal Supreme Court and the Federal Administrative Court).

III. Elimination of cantonal discrepancies in funding for the implementation of women's rights and gender equality and need for each canton to have a gender equality office

10. The principle of *de jure* and *de facto* gender equality is set out in article 8, paragraph 3, of the Constitution. As with the obligations deriving from the Convention, the constitutional mandate to ensure equality must be implemented at all federal levels of the State.¹⁴

11. In order to take stock of the situation in the cantons with regard to this second recommendation, the Federal Office for Gender Equality carried out a broad consultation of the cantons through the Conference of Cantonal Governments and the Swiss Conference of Gender Equality Delegates. The results of the consultation can be summarized as follows:

12. The situation varies widely from canton to canton. Most cantons and a few major cities have established an equality organization in the form of an office or an advisory commission. Some cantons have both an office within the civil service and an equality commission. The Swiss Conference of Gender Equality Delegates currently has 17 cantonal members and 8 communal members. It supports, coordinates, plans and implements national activities and participates in shaping public opinion and a coherent equality policy. Of the nine cantons that are not members of the Swiss Conference of Gender Equality Delegates, five have either an equality commission, an office that promotes gender equality in a cross-cutting manner, or an external gender equality office.

¹¹ Minimum standards for initial training and continuing education: legal profession.

¹² Minimum standards for initial training and continuing education: police.

¹³ For example, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (SR No. 0.311.35), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (SR No. 0.311.40) or the Council of Europe Convention on Action against Trafficking in Human Beings (SR No. 0.311.543).

¹⁴ See Federal Supreme Court judgment No. 1C_504/2016 of 19 October 2017, recitals 4.2 and 4.5, and Federal Supreme Court judgment No. 131 I 305, recital 4.4.

13. The difference between the various cantonal and communal offices lies in their mandates. In about half the offices, the original mandate has been expanded. In addition to focusing on gender equality, some offices have been tasked with addressing gender-based violence, family policy and equality for lesbian, gay, bisexual, transgender and intersex persons. In the other offices, the possibility of expanding the mandate is under consideration.

14. Because they are financially sovereign, the cantons and communes decide for themselves how much to spend on advancing equality. The cantons are responsible for deciding on the organizational structure and financial resources required.

15. As Switzerland is a federal State, there are considerable differences among the cantons and communes in terms of the resources allotted to the various equality offices. The budgets of most cantonal and communal offices have remained more or less the same over the past few years, with slight increases for those offices whose mandates have been expanded. Requests for budget cuts or reductions, made by a small number of cantons and towns in the context of weakening public finances, have all been rejected by legislative bodies.

16. The consultation also revealed that for the majority of cantons, eliminating cantonal discrepancies in the funding of gender equality policies, as recommended by the Committee, is neither politically realistic nor desirable, in part due to issues of federalism. While the cantons agree that sufficient resources need to be committed, most feel that the organizational structure and the level of financial resources required depend on the situation and conditions in each canton. Most are also of the view that financial resources are not the only requirement for implementing international and national commitments to protect women's rights and gender equality: small cantons can achieve excellent results with relatively small budgets. A small number, however, are in favour of establishing a standard funding framework to guarantee a minimum level of resources for equality issues and ensure basic provision in this area.

17. Strategies and action plans are necessary in order to mainstream equality issues into cantonal administrative structures. Some cantonal and communal authorities have already adopted multi-year strategies and action plans to promote gender equality in general or specific areas. In line with the Gender Equality Strategy 2030, several cantons have also announced the development of new strategies and action plans.¹⁵ These strategies and action plans are intended to promote equality within the cantonal and communal administrations, with a focus on equal pay for equal work, balancing work and family life, education, career choices and vocational training, the job market, women's political participation, the integration of migrant women and combating sexual harassment, gender-based violence and gender stereotypes.

18. Discussions among experts play an important role in network-building and strengthening equality offices in Switzerland. The Gender Equality Charter of French-speaking Switzerland, signed in September 2023 by the State councillors responsible for equality in the French-speaking cantons, is the product of inter-cantonal discussions.¹⁶ The Charter reaffirms the importance of strengthening cantonal public policies on gender equality and recognizes the importance and value of the Congress of Equality Offices of French-speaking Switzerland.¹⁷

¹⁵ See www.egalite2030.ch/fr/.

¹⁶ See https://egalite.ch/wp-content/uploads/2023/09/BEFH_charte_egalite_2023.pdf.

¹⁷ See <https://egalite.ch/>.

IV. Amendment of the definition of rape and other sexual offences

19. The revised criminal law on sexual offences came into force on 1 July 2024.¹⁸ At the heart of the reform is the amendment of the definitions of rape and sexual coercion.

20. Under the new law, acts are considered rape or sexual coercion if the victim makes it clear to the perpetrator, through words or gestures, that he or she does not want to have sexual relations, and the perpetrator intentionally disregards the will expressed by the victim. This is known as the “no means no” principle. If the victim is in a state of shock, that is also considered refusal. If a victim is paralysed by fear and unable to refuse or defend himself or herself and the perpetrator takes advantage of that state of shock, he or she will have to answer for rape or sexual assault and coercion.

21. In addition, rape is no longer limited to sexual intercourse and now covers any similar act involving physical penetration; it therefore covers many more sexual acts than the previous law. The new offence is defined using gender-neutral language, so that judges can apply the rape provision regardless of the victim’s gender.

22. The grounds for acquittal set forth in articles 187 (3), 188 (2), 192 (2) and 193 (2) of the Criminal Code, which the Committee flagged, have been abolished.

V. Revision of the rules for hardship cases in the event of domestic violence

23. On 14 June 2024, the Parliament voted to amend the rules for hardship cases in the event of domestic violence.¹⁹

24. In future, in the event of family dissolution, foreign family members of Swiss nationals, holders of a settlement permit (C permit), a residence permit (B permit) or a short-term residence permit (L permit), and temporarily admitted foreign nationals (F permit) shall be entitled to receive a residence permit and extend the validity of that permit if they are victims of domestic violence. The new rules will also apply to foreign partners who are not married, provided that they were previously granted a hardship residence permit to live with their partner in Switzerland, as is already the case for people in same-sex registered partnerships. In addition, the list of possible indicators of domestic violence to be taken into consideration by the authorities will be expanded and regulated by law. This includes recognizing the person concerned as a victim within the meaning of the Victim Support Act (SR No. 312.5), confirming the need for care or protection by specialized domestic violence services, and the existence of medical reports or criminal proceedings.

25. This amendment to the Foreign Nationals and Integration Act (SR No. 142.20) is due to come into force on 1 January 2025. It will enable Switzerland to withdraw its reservation to article 59 of the Istanbul Convention.²⁰ The capacity of the immigration authorities does not need to be increased as the amendment can be implemented within existing resources. Nevertheless, in line with the national action

¹⁸ RO 2024 27.

¹⁹ Federal Gazette No. 2024 1449.

²⁰ The reservation was made because under Swiss law, the foreign family members of permit holders did not have a legal right to an independent residence permit in the event of the dissolution of the marriage. See Federal Council dispatch of 2 December 2016 concerning the approval of the Istanbul Convention, Federal Gazette No. 2017 163, ch. 2.7.1.

plan for the implementation of the Istanbul Convention and the domestic violence road map, it is necessary to raise awareness among the immigration authorities and strengthen their collaboration with victim support centres and women's shelters.^{21,22}

²¹ See www.egalite2030.ch/fr/pan-ci-29 (measure 29).

²² Domestic violence: roadmap for the Confederation and the cantons (action area 6).