



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Switzerland**

**Information provided by the Government of Switzerland on  
the follow-up to the concluding observations of the Human  
Rights Committee (CCPR/C/CHE/CO/3)**

[5 November 2010]

## **I. Introduction**

1. The Government of Switzerland is pleased to transmit the following information on the implementation of recommendations Nos. 10, 14 and 18 made by the Human Rights Committee in its concluding observations of 3 November 2009.

### **A. Implementation of recommendation No. 10**

#### **(a) Mandate of the Federal Commission against Racism**

2. The Federal Commission against Racism provides advice to victims of acts of racial discrimination, firms and counselling services faced with racism, particularly regarding the requisite actions at the national and international levels (see paragraph 47 of the third periodic report of Switzerland of 12 October 2007 (CCPR/C/CHE/3)).

3. The possibility of extending the Commission's mandate by creating a national human rights resource centre has been considered. Finally, the Federal Council chose a pilot scheme, preferring to set up the Swiss Competence Centre for Human Rights, made up of a network of universities chosen via tenders. The Confederation and other stakeholders, including the cantons, will purchase services from this network (see paragraphs 17 et seq. of the replies of the Government of Switzerland of 10 August 2009 (CCPR/C/CHE/Q/3/Add.1) to the list of issues). At the end of the five-year pilot phase the Government will take stock of experience from the pilot phase and consider whether to establish a permanent independent centre empowered to take legal action in cases of human rights violations, including racial discrimination.

#### **(b) Efforts to promote tolerance and cultural dialogue**

4. Mainstreaming issues of racism and discrimination into all areas of life is the most important task of the Service against Racism and is part of the current integration policy. The Service, in close collaboration with the Confederation's relevant authorities, the cantons and the communes, ensures that these themes are mainstreamed into the work of various institutions.

5. The Service provides financial aid for training, awareness-raising and prevention projects focusing on combating racism. Between 2001 and 2009 it funded more than 850 projects in all the country's regions, for a total of 19 million Swiss francs. A third of the total went to educational projects.

6. The following are examples of funded activities and projects:

(i) During Ramadan in 2010, a public discussion was held in Bienne in which members of the Muslim community and high-level representatives of local government participated. The goal was to foster mutual understanding and dispel prejudices regarding the Muslim population;

(ii) In December 2010 the Swiss Conference of Integration Services (CoSI) will organize a symposium. These services implement integration programmes financed by the Federal Office for Migration at the cantonal and communal levels. The symposium will focus on the development of activities to incorporate anti-discrimination activities into the work of regional integration promotion entities;

(iii) Several cantonal and communal police forces — for example, those of the cantons of Zug, Zurich and Basel-City — as well as the Eastern Switzerland Police Academy include in their continuing education programmes a module on police work in a multicultural setting. The training includes many opportunities to discuss and reflect on racism and discrimination. Police officers present and analyse specific cases encountered in their contact with foreigners. Behavioural models are developed on the basis of these activities.

7. Several projects involve close collaboration between federal, cantonal and communal authorities to ensure broad-based support and lasting impact:

(i) Neighbourhood development projects are being implemented in 11 medium-sized Swiss towns to improve the prospects of inhabitants of the neighbourhoods and facilitate integration;

(ii) A sustainable development education programme includes various measures to integrate human rights and civic education into school curricula and teacher training;

(iii) To mark the International Year of Human Rights Learning, in 2009 a total of 200,000 francs was allocated to support human rights education in schools. Provision of this funding was spearheaded by the Education and Development Foundation with contributions from the Service against Combating Racism, the Federal Department of Foreign Affairs, the Federal Commission on Migration Issues and the Federal Office for Gender Equality.

8. Counselling:

(i) A victim counselling and support network of approximately 200 entities has been established. These are listed on the website of the Service against Combating Racism;

(ii) The Service against Combating Racism has also provided support for the establishment of a documentation and monitoring system by the organization humanrights.ch and the Federal Commission against Racism. The system makes it possible to compile cases encountered by counselling services. The cases are analysed and published in the annual report.

9. Protection against discrimination:

(i) In 2009 a guide to legal issues related to racial discrimination (*Guide juridique: discrimination raciale*) was published containing practical advice on resources (in addition to the legislation making racism a criminal offence) available to defend oneself against discrimination;

(ii) In 2009 and 2010 more than 30 continuing education courses were organized for more than 300 people working for NGOs, associations and various levels of government. Most participants were not specialists in racism-related or legal issues but appreciated the opportunity to reflect together on their experience and discuss it with experts.

**B. Implementation of recommendation No. 14****(a) Independent complaint mechanisms**

10. The federal structure of the Swiss State permits the cantons to freely choose the procedures they consider most appropriate for dealing with areas under their jurisdiction, provided these are compatible with federal and international law. Since the cantons are responsible for handling complaints against the cantonal police, the State has not taken any particular action to encourage them to create mechanisms similar to the one in the canton of Geneva.

11. In Switzerland the justice is independent at all levels. Consequently, many cantons are of the view that a special mechanism for investigating complaints against the police is unnecessary. In these cantons, depending on the system in place, either the office of the investigating judge or the prosecutor deals with offences committed by members of the police force, while the supervisory authority investigates complaints about police conduct through administrative procedure. In many cantons all complaints regarding the police must be submitted immediately to an investigating judge or the prosecutor, without first being examined by the police. Some cantons also provide the option of applying to an ombudsman. If there is a risk that the investigating authority may not be perceived as independent, the cantons also provide the option of assigning the investigation to an ad hoc investigating judge or prosecutor, who is usually from another canton.

12. A recent example illustrates the effectiveness of ordinary criminal proceedings in cases of ill-treatment by the police. In its decision of 30 September 2010, the Federal Court upheld the sentencing of a police officer to 10 day-fines, suspended for two-years, for negligence in handcuffing a plaintiff causing subacute mononeuropathy resulting from a pinched nerve (decision 6B\_459/2010 of 30 September 2010).

13. In addition to the procedures mentioned in paragraphs 391 et seq. of the Swiss Government's report and in its written replies of 10 August 2010 to the Committee, the cantons have implemented other mechanisms, such as the following:

14. In the canton of Basel-City, complaints alleging ill-treatment by the police can be addressed either directly to the independent authorities responsible for initiating criminal proceedings, or to an ombudsman who answers only to the legislative authority of the canton and has full investigative rights. If there are sufficient grounds to suspect an offence, a criminal investigation is opened. The general secretariat of the cantonal department of justice and security also has its own appellate body. Independently of the various services, it examines complaints concerning the actions of departmental services, including the police, providing there is no other remedy and the case does not fall under criminal law.

15. According to the legislation of the canton of Aargau, complaints alleging ill-treatment by the police must be examined either by the legal service of the cantonal police or by that of the cantonal department of the economy and the interior. Administrative or disciplinary measures may be taken, as appropriate. If it is suspected that a crime has been committed, a criminal complaint is made.

16. In the canton of Geneva the Inspectorate-General of Services was established in October 2009. This comprises three officers and three non-commissioned officers drawn from the gendarmerie, the judicial and international security police forces and comes under the direct hierarchical authority of the chief of police. It is independent of the police force and ensures complaints against police officers and disciplinary proceedings are dealt with

impartially, objectively and equitably. It also deals with certain grievances. The canton also has an ethics office which examines accusations, reports and assessments regarding the use of force by the police and prison staff as well as allegations of ill-treatment. It can conduct investigations and is exempt from restrictions relating to official secrecy.

17. In the canton of Schwyz, an appeal can be lodged before the Council of State and then before the cantonal administrative court.

18. The canton of Zurich has appointed an ombudsman whose task is to examine complaints against the administration, including the police. The ombudsman can bring matters to the attention of the administration. If he or she suspects that a criminal offence has been committed, the ombudsman can refer the matter to the Prosecutor-General. Criminal proceedings against police officials are handled by a special prosecutor. The canton's prosecution service and its police force are in different departments, thereby ensuring greater independence for investigative authorities. Finally, the decision to institute or drop criminal proceedings against a member of the administration is always made by the court, specifically the indictments chamber of the cantonal court, whose decisions are open to appeal.

**(b) Compensation for victims**

19. At the federal and cantonal levels, individuals who suffer harm as a result of ill-treatment by the police can obtain reparation by filing a claim for damages from the Government. In general the crime victims assistance Act is also applicable and offers under certain conditions the possibility of obtaining reparation for moral harm (cf. paragraphs 19 and 227 of the report of the Swiss Government).

**(c) National database**

20. There have been no new developments regarding the establishment of a national database on police abuse since the oral presentation of Switzerland's third periodic report in October 2009.

**(d) Members of minorities in the police force**

21. To answer the Committee's question, it is worthwhile to distinguish between the representation of minorities and the admittance of foreigners into the police force.

22. Regarding representation of minorities, there are no statistics on the proportion of Swiss nationals in the police force who have immigrant origins. Many cantons are of the view that there is no reason to admit foreign nationals into their police forces as foreigners meeting the necessary conditions can apply for Swiss citizenship. A foreigner who has lived in Switzerland for 12 years can request Swiss citizenship (with time spent in Switzerland between age 10 and age 20 counting double) provided he or she is integrated into Swiss society, is accustomed to Switzerland's customs and way of life, adheres to Swiss laws and does not threaten the country's internal or external security.

23. Some cantons, while requiring Swiss citizenship for employment in the police force, actively promote recruitment of officers with immigrant backgrounds. In Aargau, the authorities ensure that women and people with immigrant backgrounds are appropriately represented in each intake of police officers. According to information available to the Government, the police forces of many cantons include employees of immigrant origin.

24. The cantons of Basel-City and Schwyz have adopted corresponding legislation. In the canton of Fribourg foreigners cannot be hired as police officers or auxiliary officers but can be hired as civilian employees of the cantonal police force.

### **C. Implementation of recommendation No. 18**

25. The right to free legal assistance is enshrined in article 29, paragraph 3, of the Constitution, which states that “anyone who does not have sufficient means is entitled to free legal advice and assistance unless their case appears to have no prospect of success. If necessary, in order to safeguard their rights, they are also entitled to free legal representation.” It is true that the Federal Act on Administrative Procedure provides for free legal assistance only in connection with administrative appeals (article 65 of the Act). Nevertheless, the case law of the Federal Court indicates that the provision of legal assistance extends to all administrative procedures, whether contentious or not, independently of whether the procedure in question involves a dispute, and thus also to first-instance proceedings.

26. As the Asylum Act contains no relevant provisions, except regarding unaccompanied minors, the minimum safeguards in the Constitution apply to the first-instance asylum procedure. At that stage the asylum-seeker may also be assigned a legal representative. This right was explicitly recognized in the decision of 10 July 2001 of the former Swiss Asylum Appeals Commission.

27. The right to legal representation is, however, subject to several cumulative conditions: the party must be indigent, the case must not appear to have no prospect of success, and the help of a legal representative must be necessary. Indigent persons are those who lack sufficient resources (article 29, paragraph 3, of the Constitution) – that is, who cannot bear the costs of legal representation in addition to their own living costs and those of their family. A case is considered to have no prospect of success if even a person with the necessary means would not initiate it because a reasonable evaluation of the risks involved indicates that the person’s prospects of winning the case are lower than the prospects of losing. To determine this, the competent authority must make a preliminary evaluation of the evidence and the asylum-seeker’s claims. If both of the above conditions are met, the party is entitled to free legal representation to the extent that the safeguarding of the party’s rights requires it (article 29, paragraph 3, second sentence, of the Constitution). This is the criterion of necessity. This condition is subject to the circumstances of the case and the relevant provisions. The case must involve, in law or in fact, specific difficulties that the party is not able to resolve without assistance. The need for a court-appointed defender cannot be excluded merely on the grounds that the proceedings are governed by the inquisitorial principle. Nevertheless, strict conditions apply to such cases: in the first-instance proceedings the focus is on the evidence, and asylum-seekers are generally capable of presenting their reasons for seeking asylum as these have to do with events they have personally experienced.

28. Because under certain conditions asylum-seekers already have access to free legal representation in the first instance, for both ordinary and extraordinary procedures, the Government of Switzerland is of the view that there is no need to re-examine its legislation on free legal aid.