SWITZERLAND

CAT A/45/44 (1990)

87. The Committee considered the initial report of Switzerland (CAT/C/5/Add.17) at its 28th and 29th meetings, held on 15 November 1989 (CAT/C/SR.28-29)

88. The report was introduced by the representative of the State party, who pointed out that the Convention was at present the only United Nations instrument in the field of human rights to which his country was a party, but that his Government was about to submit for approval by Parliament the accession by Switzerland to the international covenants on human rights and to the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, Switzerland was bound by regional instruments for the protection of human rights. In particular the European Convention on Human Rights and several of its additional protocols, as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had entered into force for Switzerland on 1 February 1989.

89. The representative stated that the fight against torture was one of the priority objectives of Swiss human rights policy in the international sphere. With regard to measures taken at the national level to give effect to Switzerland's commitments under the Convention, he referred to the jurisprudence of the Federal Court (the Swiss Supreme Court), according to which the prohibition of torture constituted an imperative norm of the law of nations which must be respected by all authorities and admitted of no derogation. Furthermore, international treaties accepted by Switzerland formed an integral part of the Swiss legal system and constituted an obligation of international law upon the Swiss authorities. There was accordingly no need to adapt domestic legislation to treaty obligations, such as these were directly applicable. Even though the Swiss legislature had not deemed it necessary to designate torture as a specific offence as defined in article 1 of the Convention, the prohibition of torture operated in Switzerland on the basis of articles of the Penal Code relating to homicide, bodily injuries, endangering the life or health of another person, offence against liberty such as threats and coercion, attacks on sexual freedom and honour, and abuse of authority.

90. The representative also referred to the last part of article 1 of the Convention, according to which the term "torture" did not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. He pointed out that his Government considered as "lawful sanctions" only those generally admitted under both national and international law, such as the provisions of penal procedure which, when required by the needs of the investigation, limited the right of the prisoner to communicate with a third party. It did not attribute the term "lawful" to a sanction providing for the amputation of a limb, which it considered equivalent to cruel and inhuman punishment.

91. With regard to the acts of cruel, inhuman or degrading treatment or punishment referred to in article 16 of the Convention, he stressed that Swiss law, which expressly prohibited them, did not define them. He recalled, in that connection, that the European Commission and the Court of Human Rights, in jurisprudence binding on Switzerland, had established a distinction between torture and inhuman or degrading treatment on the basis of the threshold of intensity of the suffering

inflicted; a hierarchy had thus been created on the basis of the degree of suffering to which the acts corresponded.

92. The members of the Committee thanked the Government of Switzerland for its comprehensive and detailed report and its representative for the clarity of his oral presentation. Some members requested information of a general nature on the relationship between the application of the United Nations Convention against Torture and the European Convention for the Prevention of Torture, on the abolition of the death penalty in the country and on the number of decisions handed down each year by the Swiss Federal Court concerning human rights violations. With reference to the possibility for an individual to invoke the provisions of an international treaty before the national authorities, it was asked whether the term "individual" included individuals who were not Swiss citizens.

93. With reference to article 2 of the Convention, it was noted that, under Swiss military criminal law, when the execution of an order constituted a crime or lesser offence, both the person who gave the order and the subordinate who carried it out punishable. It was asked, in that connection, whether a subordinate liable to punishment under that provision would be regarded as the perpetrator of the act or as an accessory.

94. With regard to article 3 of the Convention, members of the Committee asked for statistics on the number of cases in which extradition to country practising torture had been refused by Switzerland before and since ratification of the Convention. They also asked whether, if at any time during adjudication on an application for asylum in Switzerland, information was received to the effect that the applicant might be subject to torture or even death if refused asylum, the Swiss authorities would respond to that information, and whether a person whose appeal concerning asylum by way of an administrative petition to the Federal Department of Justice and Police had been rejected was automatically expelled. It was noted that Switzerland had ratified the European Convention on Extradition in 1966, but that not until 1983 had it embodied in the relevant legislation the principle that guarantees must be given by the requesting State regarding the physical integrity of the person sought. It was asked, in that connection, whether in the intervening period there had been any cases of persons extradited contrary to the European Convention on Extradition. In addition, with reference to decisions of the Swiss authorities to send back asylum-seekers who were not recognized as refugees, it was asked whether there had been any cases in which exceptions had been made on the grounds that they were justified by the principle of non-refoulement or by particularly distressing human considerations.

95. Turning to article 4 of the Convention, members of the Committee noted that Switzerland had a monistic system, with immediate application of international norms and domestic law, and that it had not deemed it necessary to adopt a definition of torture. However, Switzerland recognized the rule of law in regard to offences and punishment. Hence, if the Convention provided for the legal dimension of the offence, there must be a corresponding legal dimension of the punishment. It was asked in that connection how the provisions of the Swiss Penal Code quoted in the report, which concerned offences such as bodily injury or threats and coercion was linked to the definition of torture contained in the Convention, how torture became a criminal offence in Swiss domestic law, and whether a judge could base himself directly on the definition of torture provided by the Convention. Members of the Committee also asked whether there were any differences between the

Military Criminal Code and the Civil Criminal Code with respect to the penalties applied to acts of torture, whether the decision as to which code was applicable depended on the status of the perpetrator or of the act of violence concerned and what penalties were provided for in the Military Criminal Code and in the Civil Criminal Code for acts of torture. Specific examples of differences between federal and cantonal law on matters relating to torture were also requested.

96. In connection with article 6 of the Convention, it was asked what was the maximum period during which a person alleged to have committed an offence could be remanded in custody and whether penalties were prescribed for abuse of authority in that respect.

97. With reference to article 7 of the Convention, it was asked whether it had been necessary, in order to apply the Convention in the Swiss Confederation, to enact a domestic law of procedure.

98. With regard to article 10 of the Convention, members of the Committee wished to know whether Switzerland had a separate security police and, if so, whether it had powers additional to those of the civil police, what efforts were made to educate and inform the public at large about the prohibition of torture and whether there had been any cases of sanctions being imposed on prison staff for acts of violence.

99. Referring to article 11 of the Convention, members of the Committee wished to know how solitary confinement was applied in the Swiss prison system and what were the differences between cantons in the length of solitary confinement to which prisoners could be subjected. Clarification was requested on Switzerland's current policies concerning holding a person incommunicado, and, in that connection, it was asked whether that practice was applied in the same way to Swiss nationals and to aliens who constituted a danger to the security of the State.

100. In connection with article 13 of the Convention, it was noted that everyone in Switzerland was entitled to report offences, which were then automatically investigated; it was asked what action was taken on the information laid in that way before the competent official and whether a torture victim enjoyed the same guarantees regardless of whether his complaint was heard by a court or by the administrative authorities.

101. In relation to article 14 of the Convention, information was requested on Switzerland's experience in the rehabilitation of torture victims.

102. In connection with article 15 of the Convention, reference was made to the complete freedom of the judge to decide according to his own intimate conviction on the validity of evidence submitted to him, and it was asked what judicial safeguards for that intimate conviction existed in the Swiss Penal Code. It was asked also whether there was any specific provision in Swiss legislation prohibiting the use of a truth serum.

103. Replying to the questions raised by the members of the Committee, the representative of Switzerland referred to the non-judicial machinery based on visits which was provided for by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. He also explained that the Swiss Criminal Code of 1942, which was applicable to civilians in peacetime, did not comprise the death penalty; however, the death penalty was

applicable in wartime for certain specific offences. He added that, of the some 4,000 decisions handed down each year by the Federal Court, an average of about 50 decisions were related to human rights questions, and three or four to cases of individuals who invoked torture as an argument against acceding to an extraction request. The term "individual" referred to in the report also included aliens.

104. With regard to article 2 of the Convention, he stated that, under military criminal law, a subordinate who knowingly carried out an order which constituted a serious offence was liable to punishment not as an accessory, but as the perpetrator of the act on the same footing as his superior.

105. With reference to article 3 of the Convention, the representative pointed out that, in recent years, the Federal Court had ruled several times against the extradition of persons to a country where there were grounds for believing that the persons might be subjected to torture or inhuman treatment. In other cases, a request for extradition had been granted, but on certain conditions. The principle of non-refoulement was embodied in article 45 of the Federal Asylum Act. The authorities responsible for implementing decisions with respect to asylum and refoulement were bound to take into account any fresh information on the human rights situation in the country of a person whose request for asylum had been rejected, before implementing a refoulement decision against him. With regard to the application of the European Convention on Extradition, he explained that its provisions were in the main applicable in domestic law since its entry into force for Switzerland and before the entry into force of the Federal Act on International Mutual Assistance in Criminal Matters. There had been no cases, therefore of, extradition which had been contrary to the European Convention. The principle of non-refoulement was applied very conscientiously by the authorities responsible for taking the decision, even though that principle was sometimes difficult to apply since a good knowledge of the situation in the county in question was required.

106. With regard to article 4 of the Convention, the representative explained that the Federal Council had held that, although certain provisions of the Convention were directly applicable, most of them called for implementing measures at the domestic level. Article 1 of the Convention was not automatically applicable, but it could be a source of inspiration and serve as a bench-mark for administrative or judicial authorities responsible for applying the provisions of domestic law intended to give effect to the obligations arising from an international instrument. In that connection, he provided detailed information on the applicability of the relevant provisions of the Swiss Criminal Code. He further stated that the Criminal Code was applicable in all cases of offences under ordinary law, whereas the Military Criminal Code established penalties for specific offences not dealt with in the Civil Criminal Code, such as breaches of the law of war and offences committed during military service. In addition, he explained that the Swiss Criminal Code was federal whereas the codes of criminal procedure were cantonal. However, the cantons were subject to a number of obligations arising from federal legislation.

107. With regard to article 6 of the Convention, the representative stated that in his country there was no absolute limit on the duration of pre-trial detention. There were, nevertheless, a whole series of monitoring mechanisms which resulted in the duration of detention being limited in practice to what was absolutely necessary for the purposes of the investigation.

108. With reference to article 7 of the Convention, the representative pointed out that the Swiss

Criminal Code had been revised in recent years to enable the Confederation to ratify a number of international instruments embodying the principle aut dedere aut judicare. Article 348 of the Criminal Code specified which jurisdiction, i.e. which canton, was competent to judge the person concerned and consequently what code of criminal procedure was applicable.

109. In respect of article 10 of the Convention, the representative stated that there was no difference in Switzerland between the civil police responsible for ordinary police duties and the so-called political police responsible for security. The latter did not have any additional powers. The Confederation had not taken specific measures to inform the public about human rights issues, but it did subsidize some non-governmental and other organizations engaged in activities in that field. He added that in his country there had been no cases of prison staff found guilty of acts of torture.

110. Referring to article 11 of the Convention, the representative explained that solitary confinement was a disciplinary measure and that separation from other detainees was an exceptional measure that could be ordered by the judge during the preliminary investigation if he deemed it necessary for the purpose of the investigation. In recent years, however, the trend had been to ease that practice in a number of cantons, as public opinion was becoming increasingly alive to the need to protect the individual. No distinction on grounds of nationality was made in the application of any legislative or judicial provisions.

111. With regard to article 13 of the Convention, the representative pointed out that the record of reports of offences was forwarded to the authority of the canton which was competent to initiate criminal proceedings. Furthermore, there was no difference in character or in guarantees between administrative and judicial remedies. They were in fact complementary, inasmuch as an appeal to an administrative authority could lead to an appeal to a judicial body.

112. With regard to article 14 of the Convention, the representative referred to the contributions of his Government to the United Nations Voluntary Fund for Victims of Torture as well as to the provisions of the Federal Asylum Act, which provided for social security payments and disability allowances for asylum-seekers and refugees who had been subjected to torture or ill-treatment in their countries.

113. With reference to article 15 of the Convention, the representative pointed out that the judge's freedom to decide on the validity of evidence was not limitless, but subject to control, inasmuch as the Criminal Code made provision for the possibility of recourse to decide whether the evidence sufficed to establish the guilt of the individual concerned. He also stated that the use of a truth serum was contrary to the case law of the Federal Court and that the user could be prosecuted for coercion and bodily injury under the Criminal Code.

114. In their concluding remarks, the members of the Committee expressed appreciation to the representative of Switzerland for the quality of the answers given to their various questions. They also stated that the report submitted by the Government of Switzerland had made it possible to embark on a dialogue to strengthen efforts to combat all the effects of acts of torture, and that it could serve as a model both in form and substance for other reporting States.

CAT A/49/44 (1994)

128. The Committee against Torture considered Switzerland's second periodic report (CAT/C/17/Add.12) at its 177th and 178th meetings, held on 20 April 1994 (see CAT/C/SR.177 and 178 and Add.2), and adopted the following conclusions and recommendations:

Introduction

129. The Committee against Torture thanks the Government of Switzerland for its second periodic report. It also listened with interest to the oral report and clarifications presented by the Swiss delegation. The Committee wishes to thank the delegation for its replies and for the spirit of open-minded cooperation in which the dialogue was conducted. It considers the report to be in conformity with the Committee's guidelines regarding periodic reports.

Positive aspects

130. The Committee appreciates the renewed determination of the Swiss Government to guarantee respect for, and the protection of, human rights through its accession to a number of international and regional instruments for the promotion of such rights and its intention to support the adoption of the draft optional protocol to the Convention against Torture.

131. The Committee notes with satisfaction and sets special store by the fact that no governmental or non-governmental body has affirmed the existence of cases of torture within the meaning of article 1 of the Convention.

Subjects of concern

132. However, the Committee, which has heard of cases of ill-treatment suffered by persons arrested by the police, considers that reform of the legislation and practice relating to police custody and pre-trial detention is desirable, particularly the right to get in touch with one's family, immediate access to a lawyer and the right to a medical examination by a doctor of the detained person's choice or drawn from a list of doctors compiled by the Medical Association.

133. The Committee is also concerned about the system of holding persons incommunicado during pre-trial detention and the problem of solitary confinement of prisoners for long periods, which may constitute inhuman treatment.

134. The Committee, while welcoming the delegation's assurances that the Federal Court views the right of non-return as a basic right, none the less fears that certain provisions of the legislation on the right to asylum may authorize return and extradition to States in which the applicant is genuinely at risk of being subjected to torture, in violation of article 3 of the Convention.

Recommendations

135. The Committee considers it essential that any asylum-seeker whose case is being considered

with a view to return or regularization of his situation should be treated with due consideration for his dignity and should be protected against any measure that deprives him of his liberty.

136. The Committee takes note of the delegation's promise to furnish missing information in writing within six months, in particular certain statistics.

137. The Committee is convinced that the State party will make every effort to introduce the suggested legislative and administrative improvements with a view to ensuring even more satisfactory compliance with the standards laid down by the Convention.

CAT A/53/44 (1998)

80. The Committee considered the third periodic report of Switzerland (CAT/C/34/Add.6) at its 307th and 308th meetings, on 14 November 1997 (CAT/C/SR.307 and 308), and adopted the following conclusions and recommendations.

Introduction

81. The Committee against Torture expresses appreciation to the State party for its third periodic report, which was submitted within the time limit, and is drafted in accordance with the Committee's guidelines regarding periodic reports.

82. The Committee is satisfied with the clarifications and the clear and detailed replies provided by the delegation which made it possible to conduct a fruitful and constructive dialogue.

Positive aspects

83. The Committee notes with satisfaction that no governmental or non-governmental body has confirmed the existence of cases of torture in the terms of article 1 of the Convention.

84. The Committee notes with satisfaction that a provision has entered into force prohibiting racial discrimination.

85. The Committee welcomes the fact that, on 21 December 1994, the Swiss Parliament adopted a provision concerning cooperation with international tribunals under which Switzerland undertook to respond to requests for the arrest and transfer of persons accused of serious violations of humanitarian law in the former Yugoslavia and in Rwanda.

86. The Committee welcomes the revision of a number of provisions of the codes of criminal procedure in various cantons, to strengthen the rights of the defence and the rights of persons in pre-trial detention.

87. The Committee also welcomes the fact that a 24-hour medical service attached to the police and run by the Geneva University Institute of Forensic Medicine has been in operation since 15 October 1992.

88. Lastly, the Committee welcomes the financial support that Switzerland has been providing for a number of years to the United Nations Voluntary Fund for Victims of Torture and to non-governmental organizations (NGOs) operating in various countries throughout the world.

Factors and difficulties impeding the application of the provisions of the Convention

89. The Committee observes that the lack of an appropriate and specific definition of torture makes the full application of the Convention difficult.

Subjects of concern

90. The Committee is concerned about frequent allegations of ill-treatment in the course of arrests or in police custody, particularly in respect of foreign nationals. Independent machinery for recording and following up complaints of ill-treatment does not seem to exist in all the cantons. The Committee is seriously concerned at the lack of an appropriate response on the part of the competent authorities.

91. The Committee regrets the non-existence in some cantons of legal guarantees, such as the possibility for a detainee to contact a family member or lawyer immediately after his or her arrest and to be examined by an independent doctor at the commencement of police custody or when he or she is brought before an examining magistrate.

92. The Committee is concerned about the non-existence of a suspect's right to remain silent.

93. The Committee is concerned about allegations made by non-governmental organizations that, during the expulsion of certain aliens, doctors have engaged in medical treatment of those persons without their consent.

Recommendations

94. The Committee recommends that machinery should be set up in all cantons to receive complaints against members of the police regarding ill-treatment during arrest, questioning and police custody.

95. The Committee recommends harmonization of the various cantonal laws governing criminal procedure, especially as regards fundamental guarantees during police custody or when persons are held incommunicado.

96. The Committee emphasizes the need to allow suspects to contact a lawyer or family member or friend and to be examined by an independent doctor immediately upon their arrest, or after each session of questioning, and before they are brought before an examining magistrate or released.

97. The Committee recommends that an explicit definition of torture should be included in the Criminal Code.

98. The Committee recommends to the State party that it should devote the greatest possible attention to the handling of files concerning accusations of violence made against public officials with a view to the opening of investigations and, in proven cases, the application of appropriate penalties.

99. The Committee recommends the adoption of legislative measures granting suspects the right to remain silent.

100. Lastly, the Committee recommends that the authorities should investigate the allegations of medical treatment carried out on persons who are being expelled, without their consent.