

SWITZERLAND

CCPR A/52/40 (1997)

86. The Human Rights Committee considered the initial report of Switzerland (CCPR/C/81/Add.8) at its 1537th, 1538th and 1539th meetings (fifty-eighth session) on 24 and 25 October 1996, and at its 1557th meeting, on 7 November 1996, adopted the following observations.

Introduction

87. The Committee expresses its satisfaction to the State party for its detailed and comprehensive initial report and wishes to emphasize the quality of that report. It thanks the delegation for having given particularly clear, detailed and frank replies to its written and oral questions, which made possible a fruitful and constructive dialogue between the Committee and the delegation. The Committee thanks the State party for having transmitted to it, following the consideration of the report, written replies to the questions which the delegation was unable to answer orally.

Factors and difficulties affecting the implementation of the Covenant

88. The Committee notes that there are no particular factors or difficulties that might prevent the effective implementation of the provisions of the Covenant in Switzerland, with the exception of the maintenance by Switzerland of its reservations to certain articles.

Positive aspects

89. The Committee notes with satisfaction that the Covenant forms an integral part of the Swiss legal system, with a status higher than domestic legislation, that its provisions may be directly invoked by private individuals before the courts and that judges may refer to it directly. It notes that the Swiss courts, and notably the Federal Tribunal, have already on numerous occasions referred to the provisions of the Covenant and to the Committee's general comments.

90. The Committee welcomes the withdrawal of the reservation made by Switzerland to article 20, paragraph 2, of the Covenant and notes that the withdrawal of Switzerland's reservations to article 14, paragraphs 1, 3 (d) and (f), and 5, is currently under consideration by the Federal Council. The Committee also notes with satisfaction that the proposal for accession to the Optional Protocol is on the agenda of the Federal Assembly.

91. The Committee notes with satisfaction that the decisions of the Federal Tribunal seem to have remedied the shortcoming of article 4 of the Federal Constitution, whose non-discrimination clauses do not expressly cover all the grounds referred to in articles 2 and 26 of the Covenant.

92. The Committee welcomes the introduction into the Federal Penal Code, in January 1995, of a provision for the punishment of incitement to racial, ethnic or religious discrimination or hatred or to acts of racial, ethnic or religious discrimination, and also the statement of negationist views. It also welcomes the establishment, in September 1995, of a Federal Commission on Racism, whose work, however, started too recently for its effectiveness to be assessed.

93. The Committee welcomes the measures taken by the federal authorities to encourage and promote equality between men and women in all sectors of professional activity, in particular through the Federal Office for Equality between Men and Women and the entry into force, in July 1996, of the Federal Act relating to equality between women and men. The Committee notes with satisfaction that that Act, in particular, permits the shifting of the burden of proof, facilitates legal action by a victim of discrimination or harassment by making the procedure free of charge and provides for the possibility of rescinding a dismissal effected by way of victimization for the making of a complaint of discrimination or harassment.

94. The Committee notes with satisfaction that, although the Federal Constitution does not contain a provision concerning the guarantee of a fair trial, the Federal Tribunal has in its decisions ruled that all necessary guarantees follow from article 4 of the Constitution.

95. The Committee welcomes the entry into force of the Civilian Service Act, which has introduced a civil procedure for determining cases of conscientious objection.

Principal subjects of concern

96. The Committee regrets the maintenance of Switzerland's reservation to article 26 of the Covenant, which limits the applicability of the principle of the equality of all persons before the law and of the prohibition of discrimination to only those rights which are contained in the Covenant, whereas article 26 of the Covenant, as interpreted by the Committee, extends it to every area regulated and protected by the public authorities.

97. The Committee notes with concern that in many areas, such as access to higher education and to posts of responsibility, equal remuneration for work of equal value, and participation in household tasks and in the upbringing of children, equality between men and women has not yet been achieved in practice, particularly in the private sector.

98. The Committee is concerned at the numerous allegations of ill-treatment in the course of arrests or police custody, particularly in respect of foreign nationals or Swiss citizens of foreign origin and, in conjunction with those allegations, reports on the failure of the authorities to follow up complaints of ill-treatment by the police and the disproportionate nature, if not absence, of penalties. In this connection, the Committee notes with concern that in the various cantons, independent machinery for recording and following up complaints of ill-treatment by the police does not seem to exist and that, on the contrary, complaints must in the first instance be addressed to the superior administrative authority. It regrets that in various cantons, detainees may be held incommunicado for periods ranging from 8 to 30 days or even, in some cases, for indefinite periods. It also regrets the

non-existence in most cantons of legal guarantees, such as the possibility for a detainee to contact a lawyer immediately after his arrest and to be examined by an independent doctor at the commencement of police custody and before he appears before the examining magistrate. The Committee also notes that it seems very difficult in practice for most persons who have been arrested to inform their family or friends as soon as they are arrested.

99. On the question of pre-trial detention, the Committee notes with concern that it often happens that when remand prisons are full, detainees are kept, in some cases for several days, in police cells, where conditions of detention are manifestly inadequate for periods in excess of 24 hours.

100. The Committee notes with concern that the Federal Act relating to coercive measures, which entered into force in January 1995, in some cases permits the administrative detention of foreign nationals without a temporary or permanent residence permit, including asylum seekers and minors over the age of 15, for three months while the decision on the right of temporary residence is being prepared, and for a further six months, and even one year with the agreement of the judicial authority, pending expulsion. The Committee notes that these time limits are considerably in excess of what is necessary, particularly in the case of detention pending expulsion, and that the time limit of 96 hours for the judicial review of the detention decision or the decision to extend detention is also excessive and discriminatory, particularly in the light of the fact that in penal matters this review is guaranteed after 24 or 48 hours, depending on the canton concerned.

101. The Committee notes with concern that the obligation established in article 14, paragraph 3 (f), of the Covenant to provide an interpreter for everyone charged with a criminal offence if he cannot understand or speak the language used in court is not reflected in the criminal legislation of all the cantons.

102. While taking note of the delegation's statement that the provision is no longer enforced, the Committee emphasizes that the 1948 Decree of the Federal Council concerning political speeches by foreigners restricts the freedom of expression of foreigners who do not have a permanent residence permit in a manner contrary to article 19 of the Covenant.

103. The Committee also notes that family reunification is not authorized immediately for foreign workers who settle in Switzerland, but only after 18 months, which, in the Committee's view, is too long a period for the foreign worker to be separated from his family.

104. The Committee is concerned at the requirement for persons who adopt a child abroad under the regime of simple adoption to submit an application for full adoption in Switzerland if they wish the adoption to be recognized in Switzerland. That procedure makes permanent adoption subject to a two-year trial period, during which the adoptive parents may decide not to go ahead with the adoption and the child is entitled only to a temporary and renewable foreigner's residence permit. The Committee expresses its concern because those two factors make the child's position very precarious from both the legal and emotional standpoints.

105. The Committee notes that the Federal Constitution contains no provisions reflecting article 27

of the Covenant. The Committee considers that article 27 is not limited to the protection of the various national minorities but concerns all ethnic, religious or linguistic minorities present in the territory of a State.

Suggestions and recommendations

106. The Committee suggests that the authorities should seriously consider withdrawing the reservation made by Switzerland to article 26 of the Covenant, so that the article may be implemented, in the spirit of the Covenant, as an autonomous right guaranteeing non-discrimination in all spheres regulated and protected by the State. The authorities' attention is drawn to General Comment No. 18 (37) on non-discrimination and to General Comment No. 24 (52) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

107. The Committee hopes that favourable consideration will be given to the possibility of acceding to the Optional Protocol to the Covenant.

108. The Committee recommends that measures be taken by the authorities to combat discrimination against women in practice. In this connection, the Committee emphasizes the importance of educational campaigns to develop awareness of the problem of discrimination and recommends that all possible measures be taken, in particular at the social infrastructure level, to make it easier for women who wish to work outside the home to do so. The Committee also recommends that the authorities make greater efforts strictly to implement the constitutional and legislative provisions relating to equal pay for men and women for work of equal value, particularly in the private sector.

109. The Committee recommends that the discussions aimed at harmonizing the various cantonal laws on criminal procedure be intensified, with due respect for the provisions of the Covenant, particularly with regard to fundamental guarantees during police custody or incommunicado detention. The Committee emphasizes in particular the need to allow suspects to contact a lawyer and their family or friends and to have suspects examined by an independent doctor as soon as they are arrested, after each period of questioning and before they are brought before the examining magistrate or released. The Committee further recommends that independent machinery, subject to public supervision, be introduced in all cantons to receive complaints against police officers concerning ill-treatment during custody.

110. The Committee recommends that all necessary measures be taken to ensure that accused persons are not detained for several days in police premises.

111. The Committee recommends that the Act relating to coercive measures be implemented in a restrictive manner and in the spirit of the Covenant, so as to ensure that the length of detention applicable under the Act is as short as possible and that the judicial review of the detention decision or the decision to extend detention is carried out in less than 96 hours. The Committee also recommends that all possible measures be taken to ensure that foreigners who are covered by that

Act are informed in a language they understand of the remedies available to them and are assisted by counsel.

112. The Committee recommends that measures be taken to bring the criminal legislation of all the cantons into conformity with article 14, paragraph 3 (f), of the Covenant.

113. The Committee recommends that the Federal Decree of 24 February 1948 concerning political speeches by foreigners be abrogated, or amended, so as to bring it into conformity with article 19 of the Covenant relating to freedom of expression.

114. The Committee also recommends that measures be taken to permit the family reunification of foreign workers resident in Switzerland shortly after they obtain a temporary residence permit.

115. The Committee recommends that the necessary legislative measures be taken to ensure that children who have been adopted abroad are granted, as soon as they arrive in Switzerland, either Swiss nationality if the parents are Swiss, or a temporary or permanent residence permit if the parents have such a permit, and that the two-year trial period prior to the granting of adoption should not apply to them.

116. The Committee welcomes the publication of Switzerland's report in the official languages and recommends that these concluding observations should be disseminated.

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(76) Switzerland

(1) The Committee considered the second periodic report of Switzerland (CCPR/C/CH/98/2) at its 1964th and 1965th meetings, held on 19 October 2001, and adopted the following concluding observations at its 1977th and 1978th meetings, held on 29 and 30 October 2001.

Introduction

(2) The Committee welcomes the timely submission of the State party's comprehensive second periodic report. The Committee appreciates the extensive supplementary report covering events since the submission of the initial report. (It regrets that the supplementary report was submitted too late to be made available in more than one working language.) It also appreciates the State party's detailed responses to the Committee's concluding observations on consideration of the initial report, as well as the additional information provided by the delegation in response to the Committee's questions.

Positive aspects

(3) The Committee welcomes the progress made since the consideration of the State party's initial report in advancing the protection of Covenant rights. It especially notes the adoption of the revised federal Constitution, which came into force in January 2000, and which contains a bill of rights.

(4) The Committee welcomes the repeal in March 1998, following its previous recommendations (see CCPR/C/79/Add.70, para. 28), of the Federal Decree on Political Speeches by Foreigners, which restricted the freedom of expression of foreigners without a permanent residence permit.

Principal areas of concern and recommendations

(5) The Committee remains concerned that the State party has not seen fit to withdraw its reservations to the Covenant. It notes the mandate given to the federal administration to examine the question of the removal of reservations to human rights treaties and hopes that by the time the next report is considered all reservations to the Covenant will have been withdrawn. Further, the Committee reiterates its recommendation that the State party accede to the Optional Protocol to the Covenant.

(6) The Committee is concerned that the application of the State party's obligations under the Covenant in all parts of its territory may be hampered by the federal structure of the State party. It reminds the State party that under article 50 of the Covenant the provisions of the Covenant shall extend to all parts of federal States without any limitations or exceptions.

The State party should take measures to ensure that the authorities in all cantons and communities are aware of the rights set out in the Covenant and of their duty to ensure respect for them.

- (7) The Committee is concerned that urgent legislation that has no constitutional basis, permitted under article 165 of the Federal Constitution, may lead to derogation from Covenant rights, without the requirements of article 4 of the Covenant being met.

The State party should ensure that its framework for urgent legislation ensures compliance with its obligations under article 4 of the Covenant.

- (8) The Committee is concerned that incidents of racial intolerance have increased. While commending the continuous efforts made by the Federal Commission against Racism to combat anti-Semitism, racism and xenophobia, it notes that the Commission does not have the power to initiate legal action to combat racial incitement and discrimination.

The State party should ensure rigorous enforcement of its laws against racial incitement and discrimination. It should consider broadening the mandate of the Federal Commission against Racism, or creating an independent human rights mechanism with the power to initiate legal action (articles 2 and 20 of the Covenant).

- (9) In relation to article 3 of the Covenant the Committee recognizes the progress made since the initial report in promoting equality of men and women and notes in particular the launching of the Plan of Action Equality between women and men. Nevertheless, it remains concerned that women are still disadvantaged in many areas, especially in the achievement of equal remuneration for work of equal value and in appointment to senior positions, in both the public and private sectors.

The State party should implement its Plan of Action and adopt binding policies to ensure compliance with article 3 of the Covenant in all parts of its territory.

- (10) The Committee is concerned that legislation protecting individuals against discrimination in the private sector does not exist in all parts of the State party's territory.

The State party should ensure that legislation exists throughout its territory to protect individuals against discrimination in the private field, pursuant to articles 2 and 3 of the Covenant.

- (11) The Committee is deeply concerned at reported instances of police brutality towards persons being apprehended and detainees, noting that such persons are frequently aliens. It is also concerned that many cantons do not have independent mechanisms for investigation of complaints regarding violence and other forms of misconduct by the police. The possibility of resort to court action cannot serve as a substitute for such mechanisms.

The State party should ensure that independent bodies with authority to receive and

investigate effectively all complaints of excessive use of force and other abuses of power by the police are established in all cantons. The powers of such bodies should be sufficient to ensure that those responsible are brought to justice or, as appropriate, are subject to disciplinary sanctions sufficient to deter future abuses and that the victims are adequately compensated (article 7 of the Covenant).

(12) The Committee is concerned that many of the guarantees in articles 9 and 14 are not contained in the criminal procedure codes of some cantons and that a unified criminal procedure code has not yet been adopted. Consequently, rights under articles 9 and 14 are not always respected. The Committee is particularly concerned at persistent reports that detainees have been denied the right to contact a lawyer upon arrest or to inform a close relative of their detention.

The State party should take measures to ensure effective implementation of all rights under articles 9 and 14 of the Covenant in all parts of its territory.

(13) The Committee is deeply concerned that, in the course of the deportation of aliens, there have been instances of degrading treatment and use of excessive force, resulting on some occasions in the death of the deportee.

The State party should ensure that all cases of forcible deportation are carried out in a manner which is compatible with articles 6 and 7 of the Covenant. In particular, it should ensure that restraint methods do not affect the life or physical integrity of the persons concerned.

(14) While the Committee notes the delegation's explanation that incommunicado detention is not practised in Switzerland, it is concerned that the criminal procedure code in some cantons would still seem to allow such detention.

The State party should ensure that its laws throughout the country do not allow incommunicado detention in violation of articles 9 and 10 of the Covenant.

(15) The Committee is concerned at the consequences of distinctions made in various pieces of legislation between citizens and non-citizens, the latter forming a considerable segment of the workforce. In particular, aliens without working papers run the risk of becoming victims of exploitation and abuse. Another vulnerable category of persons are foreign spouses of foreigners with residence permits, who are subject to deportation in the event of discontinuation of de facto cohabitation and, hence, may be forced to live in abusive relationships.

The State party should review its policies in relation to distinctions between citizens and aliens and between different categories of aliens, in particular in respect of those who do not have papers and spouses of foreigners with residence permits, in order to ensure that the rights of such persons under the Covenant are respected and ensured (arts. 2, 3, 9, 12, 17 and 23).

(16) The State party should widely publicize the text of its second periodic report, the written answers it has provided in response to the list of issues drawn up by the Committee and, in particular, the present concluding observations.

(17) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations contained in paragraphs 152 and 154 of the present concluding observations. The Committee requests that information concerning the remainder of its recommendations be included in the State party's third periodic report, to be submitted by 1 November 2006.