



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
18 January 2010
English
Original: French

Committee against Torture

Forty-second session

26 April–14 May 2010

List of issues to be addressed during the consideration of the sixth periodic report of Switzerland (CAT/C/CHE/6)*

Articles 1 and 4

1. Please explain why, when the State party revised the section of the Criminal Code which entered into force in January 2007, it did not incorporate a specific definition of torture covering all the elements of the definition contained in article 1 of the Convention, as the Committee against Torture recommended in its previous concluding observations of 2005 (CAT/C/CR/34/CHE, para. 5 (a)). Please say whether the State party intends to amend its criminal legislation to include such a definition.

2. Please provide information about any cases in which the Convention has been applied by domestic courts. Please also supply information about the number of complaints of torture, prosecutions, convictions and sentences passed, or the reasons for any acquittals.

Article 2

3. Further to the recommendation accepted by the State party during the universal periodic review, please supply information about the progress made in implementing the Federal Act on the Criminal Status of Minors, which entered into force on 1 January 2007, in such a way as to ensure that minors under the age of 18 receive different treatment to adults while they are in police custody or pretrial detention (A/HRC/8/41, para. 57). Please also supply information about measures which have been taken, or which are being taken, to separate detainees according to their status (charged, convicted or detained) in places of detention, especially the prison of Aarau-Amtshaus, in Aargau.

4. In the context of the universal periodic review, the State party voluntarily committed itself to considering “the possibility of establishing a national human rights institution” (A/HRC/8/41/Add.1, para. 2). Please provide information about current progress towards the establishment of such an institution in accordance with the Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights.

* Paragraph numbers in brackets refer to the State party report, issued as document CAT/C/CHE/6.

5. Please provide information about the stage reached in setting up the national preventive machinery which was to be approved by Parliament (paragraph 15 of the report). Please say what guarantees of independence exist with regard to the process of appointing members and what financial resources the State party intends to allocate to this institution.
6. Please supply additional information about article 225, paragraph 5, of the new Code of Criminal Procedure, which dispenses with the need for a person held in police custody to appear in court in order to be notified that he or she is to be placed in detention.
7. In paragraph 174 of the report on its visit to Switzerland from 24 September to 5 October 2007, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment expressed its concern about the fact that detainees did not receive a medical interview or examination on their admission to certain prisons. Please describe the steps taken to remedy this situation in all places of detention in the various cantons of the State party.

Article 3

8. Please supply information about the measures taken to ensure the presence of independent human rights observers or doctors during forced removals of aliens by air. Please supply statistics of cases where this measure has been applied.
9. Please say how many complaints, if any, have been made of torture, or of cruel, inhuman or degrading treatment or punishment during return or refoulement in the context of the application of the law on asylum and the law on foreigners.
10. In its previous concluding observations, the Committee against Torture recommended that the State party should ensure that asylum-seekers were granted full respect of their economic, social and cultural rights during all procedures established by the new law on asylum (CAT/C/CR/34/CHE, para. 5 (h)). Please provide additional information about the measures taken by the State party to ensure that urgent assistance is made more accessible to persons whose asylum applications have been dismissed and who are not therefore eligible for social assistance, in accordance with article 12 of the Federal Constitution and the judgement of the Federal Court of 18 March 2005, which ruled that asylum-seekers have the right to emergency assistance even if they act in an uncooperative manner (paragraph 64 of the report).
11. After the precedent of the former Asylum Appeals Commission was reversed in 2006, the State party adopted the “theory of protection” in the event of asylum on the grounds of non-State persecution (paragraph 83 of the report). Please provide information about the guarantees of protection sought by the State party on returning an asylum-seeker pursuant to this new legal theory, which requires the State party to consider whether this person might receive protection from his or her country of origin.
12. Please indicate which countries, if any, have submitted requests to the State party for extradition under article 3 and what action was taken on them. Please also say if the State party has made any such requests and the countries to which they were addressed.
13. According to the Marty report, the State party authorized the use of its airspace and of Geneva and Zurich airports by aircraft transporting persons who had been captured and detained without a trial and who were said to have been tortured in the countries of destination. Please supply information on these cases, describe the State party’s procedure, guarantees, and control mechanisms and explain whether they are compatible with the principle of non-refoulement, especially with regard to the use of diplomatic assurances. Please also say whether the State party investigated these cases and what the findings were.

14. In response to a previous recommendation of the Committee against Torture, the State party stated that information for asylum-seekers on their rights, in particular on their right to regular access to fresh air and medical care, was already available (CAT/C/CR/34/CHE, para. 5 (i)). Please provide information on the progress made in actually implementing this right.

15. Please supply data disaggregated by age, sex and nationality for 2005, 2006, 2007 and 2008 on:

- (a) The number of applications for asylum registered;
- (b) The number of applications granted;
- (c) The number of applicants whose requests for asylum were accepted on the grounds that they had been tortured, or that they might be tortured if they were sent back to the country from which they came; and
- (d) The number of persons who were expelled, returned or extradited, the countries to which they were sent, and the means used by the State party to ensure that these persons were not likely to be tortured in the country of destination.

Articles 5, 6, 7 and 8

16. Please supply further information about the application of article 7 of the new Criminal Code, which makes the exercise of criminal jurisdiction over specified acts of torture subject to the requirement of dual criminal liability (paragraph 109 of the report).

17. Please state the number of cases, if any, in which the State party has had occasion to apply the provisions of article 6. If such cases have occurred, please say if these persons benefited from all the guarantees mentioned by the State party in its report (paras. 113–115), in accordance with article 6.

18. Please say whether, since the last report, the State party has concluded any new extradition treaties which include provisions on acts of torture. Please provide examples of judgements and cases in which the State party approved or refused extradition and specify the other States concerned. Lastly, please say whether the State party itself has received or presented any requests for judicial cooperation in connection with criminal proceedings related to cases of torture.

19. Please say whether, since the last report, Switzerland has had occasion to use the Convention against Torture as the legal basis for the extradition of persons accused of committing acts of torture. Please mention cases in which extradition was refused pursuant to article 3.

Article 10

20. Please say whether the various initial, advanced or in-service training courses provided for in cantonal agreements and taught in the staff training centres of prisons and detention centres (paragraphs 143–154 of the report) include explicit instruction in the prohibition against torture and other inhuman or degrading treatment or punishment. Please say also if these courses include training for medical staff responsible for detecting the physical and psychological signs of torture in persons deprived of liberty and for their rehabilitation in accordance with the Istanbul Protocol. If they do, please say who gives these courses and what methodology is used to evaluate this training.

Article 11

21. During its visit from 24 September to 5 October 2007, the European Committee for the Prevention of Torture (CPT) expressed concern about prison overcrowding, especially at the Champ-Dollon prison in the canton of Geneva. Please describe the measures taken and the progress made by the State party in response to this concern, in particular in terms of abiding by a normal occupation rate at the Champ-Dollon prison and making greater use of alternative or non-custodial sentences.

22. Please supply information about laws, regulations and instruments concerning the treatment of persons who have been arrested, detained or imprisoned, and about mechanisms for inspecting prisons and other places of detention in the various cantons. Please also specify the authority competent to receive prisoners' complaints and the procedure for processing such complaints.

23. During its visit to Switzerland from 24 September to 5 October 2007, the CPT expressed concern about use of "strangulation" techniques as a coercive measure at the Lory boarding school for young offenders. Please say what measures have been taken by the State party to prohibit the use of this form of coercion in all establishments of this kind in Switzerland.

Articles 12 and 13

24. According to information supplied by non-governmental organizations, police violence occurred during the deportation of detainees from the Frambois Centre; in some cases proceedings were discontinued while inquiries were still under way and in others no action was taken notwithstanding the inquiries made. Please provide explanations regarding these cases and information about the findings of any inquiries. Lastly, please say whether similar cases have occurred in other detention centres in Switzerland and if any prosecutions have been brought.

25. In its previous concluding observations, the Committee expressed concern about the fact that, despite the increase in the number of complaints of ill-treatment by the police, only a minority of those complaints resulted in prosecution or indictment. Please explain why complaints of police violence have resulted in few charges being brought and few penalties being imposed.

26. Please say how many complaints, investigations and prosecutions of and convictions for acts of torture or ill-treatment there have been in the State party since the previous report.

27. In its earlier concluding observations the Committee against Torture recommended that the State party should encourage all cantons to establish independent machinery to receive complaints of torture or ill-treatment by members of the police (CAT/C/CR/34/CHE, para. 5 (g)). In its response to the Committee of 16 June 2005, the State party explained that nine cantons had such machinery. Please supply information about the measures taken and the progress made to secure the establishment of such machinery in all the cantons of the State party.

28. Please provide information about the outcome of proceedings in various cases related to police violence in the cantons of Neuchâtel and Ticino which were pending at the time of the report (paras. 176 and 177) and in particular about the penalties imposed.

29. Please describe the measures taken by the State party to prevent racist or religious violence in the State party and to ensure that investigations can be conducted in order to

prosecute and punish those responsible for such violence, in conformity with the legislation of the State party.

Article 14

30. Please say whether Switzerland makes physical, psychological and social rehabilitation services available to victims of torture or cruel, inhuman or degrading treatment.

31. Please say whether the State party has offered compensation and of what amount to victims following decisions regarding cases of torture. Please clarify article 3 of the revised version of the Federal Act on Assistance to Crime Victims of 4 October 1991, which abolishes any right to compensation and reparation for moral damage for offences committed abroad (paragraph 189 of the report).

Article 16

32. Please say what additional measures have been adopted by the State party explicitly to prohibit all corporal punishment, especially in the home. Please also supply information on the status of parliamentary initiative 06.419 aimed at prohibiting all corporal punishment, adopted by the Committee for Legal Affairs in 2007 and still under consideration by Parliament.

33. Please say what measures have been taken by the State party to ensure that legislation prohibiting torture encompasses domestic and conjugal violence. Please indicate what specific steps have been taken to prevent acts of sexual violence. Lastly, please provide statistics of the number of inquiries opened and their outcome.

34. The State party draws attention to the fact (paragraph 6 of the report) that in 2006 it ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the United Nations Convention against Transnational Organized Crime and the two Additional Protocols thereto. Please say what measures have been taken by the State party to prevent and combat trafficking in and the smuggling of persons. Please also give the number, if any, of investigations and prosecutions in connection with trafficking and smuggling of persons and the outcome thereof.

35. Please describe the measures taken by the State party to prevent violence among detainees in various places of detention. Please provide statistics on the size of this problem.

36. Please say what measures have been taken by the State party to prevent torture and ill-treatment in cantonal psychiatric hospitals. Please supply any statistics which might exist on the number of complaints received of torture and ill-treatment in these hospitals, the action taken on them and the results thereof.

Other topics

37. Please say what steps have been taken by the State party to ratify the Optional Protocol to the Convention against Torture, as envisaged in its report (para. 4 (d)).

38. Please indicate whether the application of the new federal Acts on secret investigations (LFIS) and on measures for the maintenance of internal security (LMSI) (of 21 March 1997, as revised on 24 March 2006) respects all human rights guarantees,

especially with regard to the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

39. In the light of the pertinent resolutions of the Security Council of the United Nations, please supply information about legislative, administrative and other measures adopted by the State party to respond to the threats of terrorism and describe the de jure and de facto impact of these measures on human rights guarantees.
