



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

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## Committee on the Elimination of Discrimination against Women

### Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

#### Combined initial and second periodic report of States parties

#### Addendum

#### Switzerland

#### Preliminary note

This written updating is limited to changes in the federal law since 1 January 2002. New measures taken after the submission of the report will, as far as possible, be referred to during the oral presentation.

#### Information

All federal Acts may be consulted at the following Internet address: <http://www.admin.ch/ch/f/rs/rs/html>, indicating the official compendium number or the title of the Act (see annex II to the report).

### 1. Penal law

#### 1. Pornography and representations of violence (para. 104 of the report)

##### Article 135, paragraph 1 bis, and article 197, section 3 bis, of the Swiss Penal Code (CPS)

The revision of the Penal Code which is intended to punish the possession of “hard” pornography has been completed. The amendment to article 197 of the Penal Code entered into force on 1 April 2002.

Any person who acquires, obtains or possesses “hard” pornography (sexual acts with children or animals, or including acts of violence) will be imprisoned for one year or more, or fined. Simple consumption (e.g., viewing such representations

on the Internet without downloading them onto a database) will, however, continue to be unpunishable.

Hitherto, manufacturing, importing, stocking, circulating, promoting, exhibiting, offering or displaying, “hard” pornography, or making it accessible or available, was prohibited by the Penal Code. On the other hand, the acquisition or possession of that type of pornographic representation for personal use did not fall outside the law. Since increased consumption of “hard” pornography goes hand in hand with increased demand for such products, mere possession of them will henceforth be punishable. The purpose is to restrict the manufacture of those products and make consumers share the responsibility. Also punishable under the new provisions is the possession of representations of non-sexual violence, which also constitute a serious affront to human dignity.

**2. Statute of limitations for penal action in respect of sexual offences (report, para. 103, sixth line ff.)**

The Federal Council recently set 1 October 2002 as the date of entry into force of the new penal provisions governing the statute of limitations.

As matters now stand, the limitation periods may, in some cases, be suspended or interrupted, often making for enormous complications in their computation, a case in point being appeal. With a view to remedying the situation while guaranteeing the certainty of the law, the new rules abolish the suspension and interruption system and replaces it with an extension of the limitation period. The preclusive time limit for penal action is now 30 years in the case of offences punishable by life imprisonment, 15 years for offences punishable by more than three years’ imprisonment or by rigorous imprisonment, and seven years for other penalties.

The special regime established for minors under 16 years of age takes account of the fact that many young victims often bury in their subconscious the suffering experienced as a result of sexual acts forced upon them, or keep silent for many years because of threats by the perpetrator. In such cases, it is only years after the offences were committed that the victims are in a position to lodge a complaint. Hence, the special regime grants them an appropriate period in which to decide on the advisability of lodging a complaint. Consequently, the preclusive time limit for penal action in cases of sexual acts involving children, and the more serious offences against the life and physical integrity of minors will, in any case, now not expire until the victim reaches the age of 25. It should be pointed out that the statute of limitations will end if a court of final instance has rendered judgement prior to its expiration. The new special regime is applicable to all offences for which the preclusive time limit remains in force after 1 October 2002.

The new system covers serious offences against the sexual integrity of children i.e. sexual acts involving children (art. 187 CPS), sexual acts with dependent persons, in other words, minors aged 16-18 (art. 188 CPS), sexual constraint (art. 189 CPS), rape (art. 190 CPS), sexual acts committed with a person incapable of discernment or resistance (art. 191 CPS), incitement to prostitution (art. 195 CPS) and trafficking in human beings (art. 196 CPS). The new rules on the statute of limitations also apply to the most serious offences against the life and physical

integrity of children: murder (art. 111 CPS), murder as a crime of passion (art. 113 CPS), and grievous bodily harm (art. 122 CPS).<sup>1</sup>

### **3. Interruption of pregnancy (report, paras. 464-465)**

#### **Articles 118-121 of the Swiss Penal Code**

Following the acceptance in a popular vote of 2 June 2002 of the new penal provisions on the interruption of pregnancy, the Federal Council set 1 October 2002 for the entry into force of the “time limit solution”.

Interruption of pregnancy will no longer be punishable if it is performed at the pregnant woman’s written request within 12 weeks of her last period and if she claims to be in a situation of distress. The doctor must first conduct an in-depth interview with the pregnant woman, advise her and hand her a list of associations and organizations able to furnish moral or material assistance. She will also be informed of adoption possibilities. If the pregnant woman is under 16 years of age she is obliged to attend a specialized youth advice centre. For their part, the cantons must designate the surgeries and hospitals that meet the requirements for interrupting pregnancies in conformity with sound practice and for providing the pregnant woman with in-depth counselling.

## **2. Federal Assistance to Victims Act**

#### **Improved protection of child victims (report, para. 111)**

##### **Article 5, Article 10 (a)-10 (d), Article 18 LAVI (entry into force: 1 October 2002)**

In the case of an offence against sexual integrity, the authorities may not bring the child and the accused face to face. In the case of other offences, confrontation is prohibited when it could cause psychological trauma in the child. Confrontation can only be ordered when the right of the accused person to be heard cannot otherwise be guaranteed. To the extent possible, the child must be heard soon after the alleged events, and the interrogation must be limited to one or two sessions. The hearing must be conducted by specially trained persons in the presence of a specialist and is videotaped.

### **3. Financial encouragement for the opening of facilities for childcare outside the family (report, para. 441)**

**On 4 October 2002, the federal chambers adopted the Federal Act on financial assistance to facilities for childcare outside the family, which provides a financial incentive for the establishment of childcare facilities by the cantons, communes, businesses and parents.**

The Act is subject to an optional referendum (referendum deadline: 23 January 2003). Consequently, the date of its entry into force will be set by the Federal Council for 1 February 2003 at the earliest.

<sup>1</sup> Cf. also reports and legal texts: FF 2001 5480; 2002 1579; 2002 2512; 2002 2581; RO 2986.

Brief summary:

- The Act is validity for eight years.
- Parliament has adopted a commitment credit of 200 million francs, or 50 million francs per year, for the first four years.
- Financial assistance is granted to institutions proposing a new facility for childcare outside the family that makes it easier to combine family life with work or training.
- The law establishes three different categories:
  - Collective day-care facilities (nurseries);
  - School-related facilities (e.g. care facilities for schoolchildren, schools operating on a continuous schedule, lunchtime canteens);
  - Facilities coordinating child-minders (day-time foster-mothers).
- Financial assistance covers a maximum of one third of the costs and may not exceed 5,000 francs per place per year.
- Financial assistance is granted to an institution for a maximum of three years.
- Financial assistance is allocated for childcare places created after the Act's entry into force. Such assistance is granted to existing institutions only if the number of places has increased significantly.
- With regard to child-minders, financial assistance is allocated for the financing of training or advanced training activities and for coordination-enhancement projects. No financial assistance is given directly to a child's parents or to child-minders.

#### **4. Federal Act on the Army and Military Administration (report, para. 222)**

Swiss troops involved in United Nations or Organization for Security and Cooperation in Europe (OSCE) peace missions have been re-armed for their own protection (arts. 66 and 66 (a), LAAM, new tenor in keeping with section I of the Federal Act of 6 October 2000, in force since 1 September 2001).

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