



International Covenant on Civil and Political Rights

Distr.: General
6 September 2021

Original: English

Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee

Addendum

Evaluation of the information on follow-up to the concluding observations on Switzerland*

Concluding observations (120th session): [CCPR/C/CHE/CO/4](#), 24 July 2017

Follow-up paragraphs: 7, 15 and 29

Follow-up reply: [CCPR/C/CHE/CO/4/Add.1](#), 6 July 2018

Committee's evaluation: Additional information required on paragraphs 7[C], 15[C] and 29[C]

Paragraph 7: Constitutional and legal framework within which the Covenant is implemented

The State party should: (a) strengthen, as a matter of priority, its mechanisms for ensuring that the compatibility of citizens' initiatives with the obligations arising from the Covenant is subject to some form of check before such initiatives are put to the vote; and (b) undertake a thorough review of national laws that are at variance with the Covenant with a view to their revision.

Summary of the State party's reply

(a) The State party refers the Committee to several sections of its common core document in which it provided information on the incorporation of international human rights instruments, the direct justiciability of the provisions of human rights instruments in national courts and citizens' initiatives. In addition, it indicates that processes are in place to assess the compatibility of citizens' initiatives with international law. In cases where citizens' initiatives violate the peremptory rules of international law, the Federal Assembly declares them totally or partially void. If proposed citizens' initiatives are incompatible with international law but do not violate peremptory rules, they can be put to a public vote, but the Federal Assembly may recommend their rejection or suggest an alternative. In cases where citizens' initiatives that invoke potential conflicts with international law go on to be approved by the people and the cantons, every effort is made to implement them in accordance with international norms and standards. Where newly adopted provisions of the Constitution leave no scope for the legislation to be implemented in accordance with international law, the people and the cantons have the option of amending or repealing the constitutional rule that is at variance with international law. The Federal Council and the federal administration have on many occasions examined the relationship between international law and domestic law,

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).



including analysis of specific issues that arise from citizens' initiatives. Such studies have shown that the existing checks have worked effectively. The citizens' initiative entitled "Swiss law instead of foreign judges", which sought to establish the primacy of constitutional law over international law, except where it involves peremptory norms of international law, was introduced in 2016. The Federal Council invited the Federal Chambers to submit this initiative to the people and the cantons without either a direct or indirect counterproposal, while recommending that it be rejected. The Federal Assembly also recommended on 15 June 2018 that this initiative be rejected.

(b) New regulations cannot be introduced into the existing legal system without taking into account fundamental rights and international law, which are an essential element of the Swiss legal system. The Federal Council and the parliament have succeeded in taking international requirements into account when implementing citizens' initiatives. Provisions of domestic law for which there remain problems with compatibility with international law are therefore rare. The State party does not plan to undertake a thorough review of national laws that are at variance with the Covenant.

Committee's evaluation

[C]: (a) and (b)

The Committee welcomes the steps taken by the State party to assess the compatibility of citizens' initiatives with international law and its efforts to recommend the rejection of the proposed "Swiss law instead of foreign judges" initiative. Nevertheless, the Committee is concerned about the lack of information on any concrete measures taken within the reporting period to strengthen the checks implemented before citizens' initiatives are put to the vote, which was recommended as a matter of priority. The Committee reiterates its recommendation and requests information on whether the State party plans to take steps to further strengthen such checks within the reporting period.

The Committee regrets the lack of information on action taken within the reporting period to initiate a thorough review of national laws that are at variance with the Covenant with a view to their revision, and the State party's indication that it has no plans to conduct such a review. The Committee reiterates its recommendation and requests information about steps taken towards its implementation.

Paragraph 15: National human rights institution

The Committee reiterates its recommendation that the State party should establish as soon as possible an independent national human rights institution with a broad human rights protection mandate and adequate human and financial resources, in conformity with principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Summary of the State party's reply

In June 2016, the Federal Council assessed the options for a lasting arrangement and commissioned the relevant departments to draft a preliminary bill for a national human rights institution according to the "status quo +" model. That model draws on the development of a pilot project, while addressing the shortcomings identified during the evaluation of the project. According to the preliminary bill, the responsibilities of the future national human rights institution will continue to be assumed by a centre attached to one or more universities. The preliminary bill also provides that the institution will be responsible for information and documentation; research; drafting views and recommendations; encouraging dialogue and collaboration between services and organizations active in the implementation and promotion of human rights, human rights education and awareness-raising; and international exchanges. The preliminary bill provides a legal basis for granting the institution a subsidy in the form of financial assistance and establishes the conditions under which it will be allocated. The amount of this financial assistance is estimated at 1 million Swiss francs per year, which is equal to the amount provided under the pilot project. The universities to which the national human rights institution is attached are expected to provide infrastructure and equipment free of charge. As with the pilot project, the bill establishing the future institution allows for the

institution to provide paid services within the scope of its mandate to authorities and private organizations.

Committee's evaluation

[C]: The Committee takes note of the information provided by the State party on the steps taken to establish a legal basis for a future national human rights institution, based on a "status quo +" model, following a pilot project. Nevertheless, the Committee is concerned that the State party continues to lack a national human rights institution that is in full conformity with the Paris Principles. It is also concerned that plans for a more permanent institution do not address the issues of concern to the Committee, including the absence of an explicit human rights protection mandate and the plan for the institution to be university-based.

The Committee is further concerned by the absence of information clearly indicating that the resources provided to the national human rights institution will be adequate and that they are to be provided in a way that fully enables the institution's accessibility and independent functioning. The Committee reiterates its recommendation to establish a national human rights institution as soon as possible. It requests information about the steps taken by the State party in the reporting period to ensure that a national human rights institution in full conformity with the Paris Principles is in place, including further details about how the funding of the institution complies with these standards.

Paragraph 29: Conduct of police officers

The State party should establish expeditiously an independent mechanism with powers to: (a) receive all complaints concerning violence or ill-treatment by police officers; (b) conduct effective and impartial investigations and prosecutions in respect of such complaints; and (c) maintain up-to-date, centralized and disaggregated statistics on all complaints, prosecutions and convictions linked to police brutality.

Summary of the State party's reply

Under the Swiss federal system, cantons have primary responsibility for processing complaints against the police. The cantons are free to define the procedures that they deem appropriate, provided that such procedures are compatible with federal law and international law. The investigation of criminal complaints against the police is regulated by the Swiss Code of Criminal Procedure, which guarantees that an independent criminal justice authority, namely the public prosecutor's office, deals with such complaints. The independence of complaints is protected by the grounds set out in the Code for recusal, and by the independence of the Swiss judiciary. The injured party may submit a request for the recusal of a person acting for a criminal justice authority to the office conducting the proceedings if there are grounds to suspect that he or she may not be impartial. The jurisprudence of the European Court of Human Rights does not provide for an obligation to establish specific appeals mechanisms in the event of incidents involving the police. There have been no developments on the issue of a national police abuse database since the submission of the fourth periodic report. The handling of complaints against police officers is regulated at the cantonal level and there is therefore no national database or corresponding register. Most cantons compile internal statistics of all the complaints received. The Federal Statistical Office, in cooperation with the cantonal police authorities, provides information on the number, structure and development of recorded offences and accused persons.

Committee's evaluation

[C]: While taking note of the information provided on the competence of cantonal public prosecutors in relation to complaints of violence and ill-treatment by police officers, the Committee regrets the lack of information on any specific steps taken to implement its recommendation to establish an independent mechanism with powers to receive and investigate complaints concerning violence or ill-treatment by police officers and to maintain centralized statistics. It strongly reiterates its recommendations in this regard.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: Due in 2026 (country review in 2027, in accordance with the predictable review cycle. See www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx).
