



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

SWITZERLAND

Addendum

Replies of the Government of Switzerland to the concerns expressed by the Human Rights Committee in its concluding observations (CCPR/CO/73/CH)

[4 November 2002]

1. On 17 September 1998 the Government of Switzerland submitted its second periodic report to the Human Rights Committee on the implementation in Switzerland of the International Covenant on Civil and Political Rights. Following the oral introduction of this report on 19 October 2001, the Committee adopted its concluding observations on 12 November 2001 (CCPR/CO/73/CH).

2. The Committee requested Switzerland to forward information within 12 months on the implementation of the Committee's recommendations contained in paragraphs 13 (deportation of aliens) and 15 (status of foreign nationals) of its concluding observations, as reproduced below:

“13. The Committee is deeply concerned that, in the course of 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 and physical integrity of the persons concerned.

“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 (articles 2, 3, 9, 12, 17 and 23).”

3. The Swiss Government has the honour to transmit to the Human Rights Committee the following additional information within the specified deadline.

I. RECOMMENDATION CONTAINED IN PARAGRAPH 13

4. As the Swiss delegation indicated during the oral introduction of its second periodic report before the Committee, the repatriation of foreigners comes exclusively within the competence of the cantonal authorities. The Federal Act on the Temporary and Permanent Residence of Foreigners nevertheless places a duty on the Federal Department of Justice and Police to assist the cantons, specifically with regard to travel arrangements. The Federal Department of Justice and Police also acts as the coordinating authority.

5. To this end, a Repatriation Division has been in operation at the federal level since 1 July 1999 with a view to advising the cantonal authorities responsible for deportations. A new federal service called SwissREPAT was established in August 2001. This service is responsible for payment of repatriation assistance, route planning, centralized ticket reservation and coordination of security escorts in connection with all departures from Switzerland by air.
6. During the oral introduction of the second periodic report, the Swiss delegation also referred to the progress of the "Passengers 2" project, which is intended, inter alia, to bring about practical improvements in the enforcement by cantonal police forces of decisions to deport foreign nationals. In the interval, the project team, comprising representatives of the relevant cantonal authorities and federal officers, has submitted its final report of 25 February 2002 (see annex) to the Conference of Directors of Cantonal Departments of Justice and Police. Basing its conclusions on a variety of expert studies, this report proposes a series of measures which have been approved in their entirety by the relevant cantonal authorities.
7. These measures include the adoption by all cantons of the directives on forced repatriations by air (see annex) which appear in annex 3 of the "Passengers 2" report. These directives go to the heart of the Committee's concerns. Specifically, they prohibit any restraint methods that could interfere with the breathing or in any way endanger the health of a person scheduled for repatriation. This measure took effect at the end of October 2002.
8. Another measure adopted by the cantons is the creation of an inter-cantonal pool of escort officers specially trained at the Swiss Police Institute at Neuchâtel. German-language training for the first batch of escort officers began on 4 November 2002. French-language training will commence on 27 January 2003.
9. On 11 April 2002 the joint working group on the enforcement of deportation was instructed by the Conference of Directors of Cantonal Departments of Justice and Police to oversee the implementation of the "Passengers 2" project. Since then, the joint working group has provided the Conference with regular updates. To date, the enforcement of deportations has not given rise to any new difficulties.
10. Lastly, it should be noted that among the conclusions contained in the report of 25 February 2002, which were approved by the Conference, the Federal Department of Justice and Police was instructed to issue a federal regulation formally restricting the use of restraint methods. However, this last measure is expected to take longer to implement.

II. RECOMMENDATION CONTAINED IN PARAGRAPH 15

11. It is certainly true that Switzerland, like other States, shelters foreign nationals who have no residence or employment papers. Exact numbers are unknown. As a matter of principle, the federal Government is opposed to any collective regularization (amnesty) for persons without papers. This is because the relevant legal provisions stipulate that foreign nationals present in Swiss territory without the proper papers must leave the country. The Government has nevertheless acknowledged the need to act and has devised a number of solutions in cooperation with the cantons.

12. In particular, the Government has decided to examine each case individually in order to determine whether, in the circumstances, deportation would occasion special hardship. When it is established that this would be the case, permission to stay is granted in principle. Swiss policy as regards foreigners and asylum also takes account, to a considerable extent, of humanitarian factors. For example, between January 1999 and late October 2001, more than 11,000 people were issued with residence permits on humanitarian grounds, despite the fact that they did not meet the usual requirements for admission.

13. On 21 December 2001 the Federal Office for Foreigners and the Federal Office for Refugees issued a circular letter to the authorities in all cantons and communes recalling and explaining the practice of the federal authorities concerning the residence regulations applicable to special hardship cases (see annex). This circular specifies, inter alia, the relevant criteria in such cases (length of stay, degree of integration, family situation, irreproachable personal conduct, etc.) and how to apply these criteria.

14. The Government has also noted the nexus between the illegal presence of foreign nationals and the opportunities for unrecorded employment offered by certain unscrupulous employers. Since they have no legal status, these workers are often forced to accept unfavourable working conditions and remuneration, over which the authorities are unable to exercise any control. The federal authorities have accordingly prepared a bill which has now been laid before the federal parliament. It includes a comprehensive set of measures, principal among which are:

Less paperwork in connection with social insurance;

Stiffer penalties;

An increase in the supervisory powers of cantonal bodies;

On-line consultation of administrative data, and the obligation to transmit the results of employer checks.

15. Once these measures have become operational, the Government expects to see a marked decrease in unrecorded employment, which in itself will have a positive impact on the number and general situation of foreign nationals illegally present in Switzerland.

16. Lastly, with regard to the situation of foreign spouses following separation or divorce, existing law already provides for the possibility of extending the spouse's residence permit. In the bill on foreigners currently before the federal parliament, continuation of residence after dissolution of a marriage is expressly provided for in cases of special hardship. The bill makes this contingent on the existence of significant personal reasons necessitating the extension of residence in Switzerland. This would be the case, for example, when the failure of a marriage in Switzerland would make it hard for the ex-spouse to integrate into family or social life in his or her country of origin.

17. Taken as a whole, these measures should strengthen the protection and improve the de jure and de facto situation of these two categories of vulnerable people.