



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

Distr.: General
8 August 2024
English
Original: French
English, French and Spanish only

Committee against Torture

Information received from Switzerland on follow-up to the concluding observations on its eighth periodic report*

[Date received: 25 July 2024]

* The present document is being issued without formal editing.



I. Introduction

1. The Committee against Torture requested Switzerland to provide, by 28 July 2024, information on follow-up to the Committee's recommendations on the definition of torture, the national preventive mechanism, an independent complaints mechanism and data collection, contained in paragraphs 10, 18, 36 and 46 of the concluding observations adopted by the Committee on 24 July 2023.
2. Switzerland was also invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

II. Follow-up information on paragraphs 10, 18, 36 and 46 of the concluding observations (CAT/C/CHE/CO/8)

Follow-up information relating to paragraph 10 of the concluding observations

3. At its meeting on 16 November 2023, the Legal Affairs Committee of the National Council, the lower chamber of parliament, considered how to follow up on the Flach parliamentary initiative No. 20.504 "Incorporation of torture as a specific crime under Swiss criminal law".¹ On the basis of a Federal Administration working paper, the Committee held an initial substantive discussion on the formulation of the criminal law provision. It then noted that, in order to determine the elements of an offence, various decisions had to be made regarding the range of potential perpetrators and the specific description of the act. The Commission has therefore instructed the Federal Administration to draft two proposals and intends to launch consultations on a preliminary bill by the end of 2024. Accordingly, at the same meeting, it decided to propose to the National Council that the deadline for implementing the initiative should be extended by two years, until its spring 2026 session.

Follow-up information relating to paragraph 18 (a) of the concluding observations

4. The budget of the National Commission for the Prevention of Torture has been increased in recent years. That increase is owing to the fact that the Commission has been tasked with new functions such as monitoring deportations under the law on foreign nationals, monitoring federal asylum centres and conducting a project to review human rights standards and medical care for persons held in places of deprivation of liberty. Today, the Commission's secretariat has 3.8 full-time equivalent posts and an overall budget of 1,227,900 Swiss francs. In addition, the General Secretariat of the Federal Department of Justice and Police provides funding for a university student to undertake an internship in the Commission's secretariat. The Commission is not billed for rent or computer support. Should the Commission be separated from the Federal Administration, it would have to cover these costs from its existing budget.

5. The Commission decides autonomously how to use its financial resources and how many visits it can carry out within its budget. Since the introduction of the new management model of the Federal Administration, the Commission's budget must be managed as part of the overall budget of the General Secretariat of the Federal Department of Justice and Police. The Commission has thus far been exempted from any requirement to make savings but, like all federal administrative units, must organize its financial planning so as to respect the financial framework.

¹ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20174121> (viewed on 10 July 2024).

6. A further increase in the Commission's budget has been ruled out for the time being, as the Confederation's accounts are expected to show substantial deficits in the coming years.

Follow-up information relating to paragraph 18 (b) of the concluding observations

7. As a unit of the decentralized Federal Administration (annex 1, referred to in article 8¹ of the Government and Administration Organization Ordinance²), the National Commission for the Prevention of Torture is subject to the Federal Act of 17 December 2004 on Freedom of Information in the Administration.³ This means that, as a matter of principle, the public should have access to any information held by the Commission or communicated to it (Federal Act, art. 5 (1) (b)) unless special provisions of other federal laws establish that certain information is secret (Federal Act, art. 4) or access needs to be limited or refused entirely owing to a series of exceptions (Federal Act, arts. 7–9). The Federal Act provides for various exceptions to the right to obtain access to the official documents of the federal authorities. Such exceptions are applied, for example, to protect an individual's privacy and personal data. Article 7 (2) of the Act establishes that the right to obtain access to an official document may be restricted, deferred or refused where such access may adversely affect the privacy of a third party. Only in exceptional cases may those concerns be outweighed by the public interest in obtaining access to such documents, such as when there is a need to protect public order (Ordinance on Freedom of Information in the Administration, art. 6 (2) (b)⁴). Given that the Commission's interviews with individuals deprived of their liberty are likely to regularly include sensitive personal data within the meaning of article 5 (c) of the Federal Act on Data Protection (such as data relating to an individual's private life, health or criminal penalties), particularly stringent conditions will have to be met in order for the public interest in obtaining access to the records of such interviews to prevail, which, in principle, will rarely be the case in practice.⁵ The same considerations apply to the protection of personal data under article 9 of the Federal Act on Freedom of Information in the Administration and article 36 of the Federal Act on Data Protection. Although the list of exceptions in the Federal Act on Freedom of Information in the Administration does not guarantee full confidentiality, the privacy of individuals deprived of their liberty is strongly protected. In practice, the communication of sensitive personal data is almost never at issue.⁶

Follow-up information relating to paragraph 36 of the concluding observations

8. With regard to police violence, the investigation of criminal complaints against the police is regulated under the Criminal Procedure Code.⁷ Article 4 of the Code establishes that such complaints must be dealt with by an independent criminal justice authority, namely the Public Prosecutor's Office. The Office is required by law to initiate and conduct proceedings without delay when it becomes aware of offences or has grounds for suspecting that offences have been committed (Criminal Procedure Code, art. 7). In Switzerland, the Public Prosecutor's Office is thus responsible for prosecuting offences committed by police officers. Individuals who consider themselves to be an injured party can lodge a complaint directly with the Office (Criminal Procedure Code, art. 301), without having to go through the police. Beyond these guarantees established under federal law, it is the cantons that have primary responsibility for taking additional measures to address complaints against the police.

² RS 172.010.1.

³ RS 152.3.

⁴ RS 152.31.

⁵ RS 235.1.

⁶ See, *inter alia*, Federal Administrative Court judgment No. 2014/42 of 6 August 2014, point 7.1.

⁷ RS 312.0.

9. Some cantons have therefore implemented additional measures,⁸ such as hearings conducted exclusively by the Public Prosecutor's Office, an officer from another police force or a special police unit dedicated to cases of this kind. Alternative mechanisms, including mediation offices and ombudsman's services, are also available.⁹ Other cantons consider that the safeguards provided for in the Criminal Procedure Code are sufficient, since all levels of the Swiss justice system are independent. Moreover, one option that is always open is to contact the relevant supervisory authority, by means of an administrative procedure, in order to complain about the behaviour of a police officer or the police in general. The working relationship between police officers and the cantons is regulated by cantonal laws (especially those on personnel and the police), which provide for various disciplinary measures and sanctions in the event of serious or repeated breaches of duty.

10. With regard to violence against individuals deprived of their liberty, it should be recalled that all cantons have their own public prosecutor's office, which is responsible for criminal prosecutions and is independent, both hierarchically and institutionally, from places of deprivation of liberty. The independence of those offices is further guaranteed under articles 3 and 4 of the Criminal Procedure Code. In addition, several cantons have independent mediation and legal advice services for individuals deprived of their liberty, through which any incidents can be reported.

11. There are no data on criminal prosecutions, which means that no national statistics exist. Similarly, no data on police violence are available owing to the fact that a perpetrator's profession does not feature among the information collected. Furthermore, there are no national data on violence against individuals deprived of their liberty, since, as mentioned above, no information on either the injured party or the perpetrator's profession is gathered. While the application of article 312 (abuse of public office) of the Criminal Code¹⁰ could give rise to some information, it would not be sufficient to classify incidents as police violence or violence against individuals deprived of their liberty.

Follow-up information relating to paragraph 46 of the concluding observations

12. The Federal Statistics Office collects police statistics on crime, statistics on adult criminal convictions and statistics on victim assistance, which mainly cover offences under the Criminal Code. The police statistics on crime cover criminal offences recorded by the police on the basis of complaints. The statistics on adult criminal convictions provide information on such convictions based on entries in the Swiss criminal records information system, VOSTRA. The statistics on victim assistance provide information on the services that have been offered to victims of crime and the compensation and moral reparations awarded by the cantonal authorities. There are currently no statistics on the complaints filed and the investigations and prosecutions conducted. In Switzerland, no data are collected on criminal prosecutions at the national level, since it is the cantons that have competence in this area.

13. With regard to torture and inhuman treatment, police statistics on crime, statistics on adult criminal convictions and/or statistics on victim assistance are available for the following articles of the Criminal Code:

- Article 124 (1) on female genital mutilation
- Article 182 on trafficking in human beings

⁸ The canton of Geneva, for example, has a mediation body that is specially dedicated to handling disputes between citizens and members of the cantonal and municipal police forces. It has also set up a special police unit dedicated to cases of this kind (Inspectorate General of Services).

⁹ Several cantons have established alternative mechanisms to those envisaged under the Criminal Procedure Code for managing complaints against police officers. For example, the cantons of Zürich, Vaud, Basel-Stadt, Basel-Landschaft, Fribourg and Zug have a mediation office. Similarly, municipal ombudsman's services are available in the cities of Bern, Lucerne, St. Gallen, Rapperswil-Jona, Wallisellen, Winterthur and Zürich (see: <https://www.ombudsstellen.ch/fr/adresses>).

¹⁰ RS 311.0.

- Article 264 (a) (1) (f) on torture

14. While the police statistics on crime contain information on injured parties disaggregated by age, gender and nationality, there are no additional sociodemographic variables. The statistics on victim assistance offer data on victims disaggregated by age group, gender and nationality. An individual's racial and ethnic origin is not among the information collected. The statistics on victim assistance provide information on the relevant compensation and moral reparations awarded by the cantonal authorities.

15. Data on trafficking in humans are available for consultation at: <https://www.bfs.admin.ch/bfs/fr/home/statistiques/catalogues-banques-donnees/tableaux.assetdetail.31986892.html>.

16. Torture and female genital mutilation are not among the offences directly covered by the statistics on victim assistance.

III. Follow-up information on other paragraphs of the concluding observations

Follow-up information relating to paragraphs 21 and 22 of the concluding observations

17. The Neuchâtel cantonal authorities state that deportations with a police escort are carried out in accordance with the directives on forced repatriations by air, which were issued by the Conference of Cantonal Justice and Police Directors on 15 April 2002. Means of restraint must be used in a manner that is consistent with the principle of proportionality, the right to personal liberty, human dignity and equal treatment, the ban on torture or cruel, inhuman or degrading treatment and the prohibition of arbitrariness and discrimination.

Follow-up information relating to paragraphs 25 and 26 of the concluding observations

18. It has been known for a long time that prison conditions in the canton of Vaud are an issue. One of the consequences of this is that prisoners are not being held where they should be. The Vaud Public Prosecutor's Office is doing all it can to limit prison overcrowding. It should be noted that the Office requests that defendants be held in pretrial detention only as a measure of last resort. Detention is subject to strict legal requirements from which the Public Prosecutor's Office and the criminal courts cannot deviate (Criminal Procedure Code, art. 221). An independent judicial authority checks that the requirements set out in the Criminal Procedure Code have been met. The authority also examines whether any alternatives to detention may be used. The situation should improve by 2030 with the opening of the new Grands-Marais prison, which will have more than 400 places that can be allocated, on a flexible basis, either to individuals being held in pretrial detention or to those serving their sentence.

19. In the canton of Glarus, the use of more alternatives to detention is supported in principle. However, many prisoners do not meet the legal criteria to benefit from such alternatives. This is the case, for example, when their residence status in Switzerland does not allow them to work or they are a flight risk.

20. Certain psychological problems resulting from solitary confinement are treated by the prison doctor where necessary. The provision of more intensive support from a psychiatrist or psychologist is something that could be further developed. Cooperation with the units of the Glarus cantonal hospital is currently not feasible owing to the fact that staff are chronically overworked.

21. The Committee's recommendation on psychiatric health care has been shared widely. However, the focus should be on psychological, rather than psychiatric, support for prisoners. This is because, in many cases, prisoners are more affected by psychological difficulties, in

particular those linked to past events such as trauma, than medical problems (which are treated more or less rapidly in clinics).

22. Against this backdrop, the Swiss Competence Centre for the Execution of Criminal Penalties has produced a manual containing recommendations on ways of proceeding.¹¹ It should also be highlighted that suicide prevention is covered in the basic training delivered to prison staff, who are offered specific in-service training on the topic of stress, depression and suicidal tendencies.¹²

23. With regard to paragraph 26 (a), the situation is better in the German-speaking cantons than in the French- and Italian-speaking cantons. Occupancy rates in the two prisons in Graubünden, Cazis Tignez and Realta, are not a problem. Other cantons will be offered assistance to the extent possible.

24. With respect to paragraph 26 (b), the correctional office of the canton of Graubünden has signed a service contract with the cantonal psychiatric services in order to guarantee the provision of basic psychiatric care within the Cazis Tignez and Realta prisons. In addition, several cantons, including Neuchâtel, have independent medical services staffed by specialist psychiatrists and psychotherapists.

25. On paragraph 26 (c), article 38 (1) (i) of the Act on the Enforcement of Criminal Penalties in the Canton of Graubünden was amended on 1 January 2022 to limit the duration of arrests to 14 days.¹³ This year, the Grand Council of Neuchâtel will once again be required to decide whether to modify its law to provide for a maximum length of disciplinary arrest of 14 days.

Follow-up information relating to paragraph 28 of the concluding observations

26. With regard to paragraph 28 (b), the canton of Graubünden explains that, with the exception of four cells, the administrative detention unit within Realta prison has been converted into cells for inmates serving sentences. The physical separation of administrative detention cells and those for inmates serving criminal sentences is guaranteed. Individuals being held in administrative detention spend a maximum of 120 hours from the time of their arrest in the dedicated unit at the Realta prison. Longer-term administrative detention is carried out in facilities outside the canton. The period during which detainees are able to be outside their cell has been extended, running from 7.40 a.m. to 8.00 p.m. The exercise yard is freely accessible during that period, and sports facilities are available there. Detainees are permitted to receive daytime visits during the week.

27. As regards the access to legal representation referred to in paragraph 28 (c), detainees are entitled to contact a lawyer by telephone at any time.

Follow-up information relating to paragraphs 33 and 34 of the concluding observations

28. In the canton of Neuchâtel, all allegations of excessive use of force or racist acts by the police give rise to a formal investigation conducted by the police (administrative procedure) and, in order to ensure the impartiality of the criminal investigation, the Public Prosecutor's Office. As is the case for all citizens, criminal proceedings against a police officer are conducted in a neutral, objective and impartial manner and involve an examination of both inculpatory and exculpatory evidence, in accordance with the Criminal Procedure Code and the Criminal Code. It should also be noted that, on 15 January 2023, a new provision (art. 39 (a)) was incorporated in the Neuchâtel Police Act,¹⁴ authorizing the Public

¹¹ [https://www.skjv.ch/fr/nos-services/publications > Santé > “Manual Prise en charge psychiatrique dans le cadre de la privation de liberté”](https://www.skjv.ch/fr/nos-services/publications > Santé > ‘‘Manual Prise en charge psychiatrique dans le cadre de la privation de liberté’’) (viewed on 16 July 2024).

¹² <https://skjv.bx-education.ch/portal/webshop/ausbildung/1892ABA8277> (viewed on 22 July 2024).

¹³ *Gesetz über den Justizvollzug im Kanton Graubünden* (BR 350.500).

¹⁴ RSN 561.1.

Prosecutor's Office to appoint police officers from another canton when necessary to guarantee the impartiality of a criminal investigation against Neuchâtel police officers.

29. The basic and in-service training provided to police officers includes compulsory modules on the use of force in a way that is consistent with the universal principles of respect for human dignity, legality, equal treatment and proportionality. The same applies to the use of weapons. Furthermore, the basic training delivered to all police officers involves courses on ethics and human rights. An example of the in-service training provided is the course entitled "The police and a changing society",¹⁵ which is run by the Swiss Police Institute and raises awareness of the issues of racism and discrimination.

30. The Neuchâtel police and prison services both have a code of ethics and various internal directives that incorporate the above-mentioned concepts and principles. In addition, the training course entitled "An egalitarian and diversity-embracing Neuchâtel administration" will be taken by all Neuchâtel public officials in the summer of 2024.

31. In the canton of Ticino, the training provided to police officers includes awareness-raising on issues relating to the prevention of discrimination and torture and the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

Follow-up information relating to paragraphs 35 and 36 of the concluding observations

32. In the canton of Glarus, a procedure that is compliant with all requirements of the rule of law has been adopted in order to guarantee the independence of criminal investigations, including those into the canton's own bodies. It should also be pointed out that the new police law will introduce an independent mechanism for handling complaints of police violence.

33. With regard to the independent complaints mechanism, the Neuchâtel service for multicultural cohesion and integration has, since 1 April 2023, been tasked with receiving, providing information to and supporting individuals who wish to lodge a criminal complaint against any public official for acts relating to discrimination, racism or violence (Neuchâtel Act on Multicultural Integration and Cohesion, art. 7¹⁶). Given that the Swiss legal system allows complaints to be lodged only with the Public Prosecutor's Office or the police, the canton of Neuchâtel has decided to establish an independent system of support for injured parties. With regard to the recommendation to collect statistical data on all complaints related to police violence, the canton of Neuchâtel already does so.

Follow-up information relating to paragraphs 41 and 42 of the concluding observations

34. The Swiss Centre of Expertise in Prison and Probation runs a practice-oriented basic training programme for prison staff, the content of which is continuously updated. This training culminates in a federally recognized professional examination. In all cantons, the successful completion of this training programme is a requirement for working in places of deprivation of liberty. The Centre also offers optional training programmes for management staff, which culminate in a federally recognized higher professional examination. It runs a number of courses providing in-service training for staff working in the penal enforcement system. Such courses focus on topical issues, such as LGBTIQ+ individuals in detention. The range of in-service courses is regularly monitored by an independent certification body (eduQua), and the programmes generally achieve very good results.

¹⁵ <https://www.edupolice.ch/fr/cours/offre-des-cours#detail&key=22153&name=3.07.001.01.f%20%2F%20Police%20et%20soci%C3%A9t%C3%A9%20en%20mutation%20%2F%20Planifi%C3%A9%20%20%2F%202020.05.2025%20%2F%202021.05.2025> (viewed on 22 July 2024).

¹⁶ RSN 132.04.