



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

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of SWITZERLAND* on the conclusions and
recommendations of the Committee against Torture (CAT/C/CR/34/CHE)**

[16 June 2005]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

**Position and comments of Switzerland concerning the recommendations
of the Committee against Torture following the presentation of the
fourth periodic report of Switzerland on 6 May 2005**

1. Switzerland has considered the conclusions and recommendations with great interest and expresses its deep appreciation to the members of the Committee against Torture for the cooperative spirit in which the presentation of the fourth periodic report of Switzerland took place.
2. It notes with satisfaction the numerous positive points raised in the aforementioned document and takes note of the recommendations that were made. Some of those recommendations and some of the underlying subjects of concern, however, have prompted the following remarks.

Recommendation 5 (c)

3. In connection with this item, the case law of the Swiss Asylum Appeals Commission can shed light on the Swiss legislation. In a 1998 case, the Commission ruled that, although the Administrative Procedure Act did not specifically mention the admission of an individual appeal by the Committee against Torture as grounds for review, the finding of the Committee that it would be illegal to enforce a return to the country of origin should nevertheless be taken into consideration in this context.
4. It should also be underscored that in the three cases in which an appeal to the Committee against Torture has been admitted, admission has always been granted on a provisional basis.
5. Article 3 of the Convention has, therefore, been fully respected.

Recommendation 5 (d)

6. Switzerland does not demand evidence beyond that required under article 3 of the Convention. It is sufficient for the applicant to establish the likelihood that he faces a genuine and serious danger of being tortured. In this connection, the situation in the country is a significant indicator. Formal proof is not required.
7. As the Swiss Asylum Appeals Commission has found: “The burden of proof is upon the alien who faces expulsion, although excessively strict conditions which would render ineffective the protection provided by article 3 of the Convention against Torture should not be imposed” (JICRA 1996, No. 18).
8. It should be added that, with respect to the decisions on asylum and return that fall within its jurisdiction, the Federal Office for Migration considers the compliance of expulsions with the requirements of public international law, and hence with article 3 of the Convention and the European Convention on Human Rights, as a matter of course.
9. With regard to extradition, it is sufficient for the person concerned to establish the likelihood that he or she is in genuine danger of being tortured in the event of extradition. In that case, guarantees are sought from the applicant State and, if they are not given, or if they do not appear credible, extradition will be refused.

Subject of concern 4 (f) and recommendation 5 (f)

10. In the absence of comprehensive statistics, it has not been possible to ascertain any significant overall increase in the number of complaints for ill-treatment at the national level, nor has it been established that such an increase would affect foreign nationals in particular.

11. Any complaint filed by an individual against the police is investigated seriously by the cantonal criminal authorities. Those authorities then conduct a preliminary investigation or institute pretrial proceedings with a view to referring the persons responsible to the court or, alternatively, to declaring the case closed or dismissing it if there is insufficient evidence, if the alleged contravention is not punishable or if there are grounds for the termination of public action. This decision is always taken by a judicial authority.

Subject of concern 4 (g) and recommendation 5 (g)

12. In its oral statement of 6 May 2005, Switzerland gave a detailed account of the situation in the cantons. It emerges from this review that an independent mechanism exists in at least nine cantons to receive and address complaints against the police in order to guarantee the necessary independence and impartiality.

13. In that connection, it should be underscored that the draft unified code of criminal procedure provides that coercive measures taken by the police shall be subject to review by a court on coercive measures, which will consider the legality of the measure taken and, also, any possible defects.

Subject of concern 4 (h) and recommendation 5 (h)

14. With respect to the alleged restriction or aggravation of access to legal counsel, it should be noted that access to legal counsel is not directly concerned by the ongoing revision of the law on asylum. The right of asylum-seekers to choose a legal representative at any stage of the proceedings remains unaffected. The revision of the law on asylum takes constitutional guarantees and guarantees under international public law fully into account. Therefore, every asylum-seeker is and shall in future be heard before his or her application is decided. As a typical example of respect for rights, it is envisaged not to take up cases in the absence of identification documents; rather, the applicant must be heard in full on his or her grounds for asylum, in the presence of a representative from a support organization.

15. With regard to the proposed extension of the pre-deportation detention period, apart from the fact that this is a maximum legal limit, the conditions for pre-deportation detention are clearly set out in the law and are subject to a fair judicial review by an independent judge in each particular case. The constitutionality of any extension of the detention period and its compatibility with public international law is carefully examined. In this context, it is recalled that any asylum-seeker whose application is rejected is required to leave Switzerland.

16. With regard to social benefits, while it is true that persons in cases of “non-entry decisions” are not eligible for ordinary social benefits, nevertheless they receive emergency assistance granted by the cantons in case of need, as provided for in article 12 of the Federal Constitution.

Emergency assistance covers food, lodging and medical care. The right to basic assistance is, therefore, guaranteed by law. Furthermore, the Federal Court ruled in its judgement of 18 March 2005 (2P.318/2004) that asylum-seekers have the right to emergency assistance even if they act in an uncooperative manner.

Subject of concern 4 (i) and recommendation 5 (i)

17. Information for asylum-seekers on their rights, in particular on their right to access fresh air and medical care, is already available.

Access to fresh air

18. A poster in the airport transit zone informs asylum-seekers that they may have access to fresh air. Those who wish to avail themselves of that opportunity must so indicate to the supervisory staff responsible for organization, as the airport police must, for security reasons, accompany the persons concerned out of the transit zone.

Access to medical care

19. Asylum-seekers in the airport transit zone have access to medical care at all times. Every individual who makes an asylum application at the airport is taken to the Medical Centre shortly after his or her arrival. Moreover, every individual may be taken to the Medical Centre during his or her stay, depending upon the seriousness of the case.
