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Third report on Switzerland

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Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 27 June 2003 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Since the publication of ECRI's second report on Switzerland, progress has been made in a number of fields highlighted in the report.

A new Constitution, containing a prohibition of discrimination, came into force in 2000. Plans are underway to extend criminal law provisions to combat racism, and attention is being paid to the problem of right-wing extremism. A Federal Service to Combat Racism has been set up within the public administration and is responsible, inter alia, for administering funds allocated to various projects to combat racism and discrimination. The situation of the Jenisch, Sinti and Roma communities has been improved by the introduction of a new Law on Itinerant Trade, and it is hoped that a new Law on Citizenship will be accepted which will facilitate naturalisation for second and third generation persons of immigrant origin.

However, progress made in other areas remains limited. No developments have occurred as regards the possibility of introducing more comprehensive anti-discrimination legislation in civil and administrative law. Problems still remain to be solved as regards the situation of Jenisch, Sinti and Roma in Switzerland. The incidence of police misbehaviour and discriminatory treatment towards members of certain minority groups, notably black Africans, is a matter of concern, as is the general climate of opinion in society towards this group. The issue of asylum seekers and refugees is also the subject of negative and hostile debate in the public and political sphere, and a number of problems remain in the field of the asylum procedure. The new Law on Foreigners and the "binary" admissions policy have been criticised by relevant actors within society as creating new discriminations and divisions.

In this report, ECRI recommends that the Swiss authorities take further action in a number of fields. It calls, inter alia, for the introduction of a prohibition of discrimination in the different fields of life within civil and administrative law, and for the establishment of mechanisms at federal and cantonal level with competence to receive and investigate individual complaints of discrimination and racism. ECRI recommends further steps to improve the situation of the Jenisch, Sinti and Roma, notably as regards the provision of stopping places. It urges the authorities to take firm action to counter the problem of police discrimination and misbehaviour towards members of certain minority groups. It also stresses the need to take steps to improve the climate of opinion within society towards certain groups, particularly black Africans and asylum seekers. ECRI also recommends that care should be taken to ensure that new laws and regulations in the field of asylum seekers and non-citizens do not lead to a weakening of the position of these groups.

I. FOLLOW UP TO ECRI'S SECOND REPORT

International Legal Instruments

1. In its second report on Switzerland, ECRI recommended that Switzerland sign and ratify the following international legal instruments: the Revised European Social Charter, the UNESCO Convention against Discrimination in Education, the European Convention on the Legal Status of Migrant Workers, the European Convention on the Participation of Foreigners in Public Life at Local Level. ECRI also recommended that Switzerland make a declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).
2. ECRI is pleased to learn that both chambers of Parliament have recently voted in favour of Switzerland making a declaration under Article 14 of the CERD, and that this declaration was submitted on 2 June 2003.
3. Switzerland has still not signed or ratified the other international legal instruments specified in ECRI's second report. As regards the Revised Social Charter, a report on ratification of this instrument has been prepared and will now be sent to the cantonal authorities for consultation. As regards the UNESCO Convention against Discrimination in Education, the fact that education is in the competence of the cantons is considered a barrier to ratification. ECRI has been informed by the authorities that further consideration might be given to the European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level once the new Law on Foreigners enters into force (see paragraph 97 below). The authorities consider that a rapid ratification of the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems should be possible given existing Swiss legislation in this area. However, ratification of Protocol N° 12 to the European Convention on Human Rights is not considered to be imminent.

Recommendations:

4. ECRI reiterates its recommendation that Switzerland sign and ratify the Revised Social Charter, the UNESCO Convention against Discrimination in Education, the European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level. It further recommends the ratification of the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems, and Protocol N° 12 to the European Convention on Human Rights.

Constitutional law provisions and other basic provisions

5. The new Constitution, which came into force in 2000, contains an equality clause and a prohibition of discrimination, with an open list of prohibited grounds, in its Article 8. Many recent revisions of cantonal constitutions also contain non-discrimination clauses.

Recommendations:

6. ECRI encourages the Swiss authorities to ensure that officials at the State and cantonal level, and the general public, are made aware of the non-discrimination clause contained in the new Constitution.

Criminal law provisions

7. In its second report on Switzerland, ECRI encouraged the Swiss authorities to closely monitor the implementation of Article 261 bis of the Criminal Code¹, particularly through the collection and publication of data on the number of cases reported, the follow-up given to complaints, and the outcome of cases brought before the courts, at federal and cantonal level. ECRI notes in this respect that since the entry into force of Article 261 bis in 1995, the Office of the Director of Public Prosecutions of the Confederation and, since January 2000, the Federal Police Office, have been recording acts which are the subject of complaints based on this provision. The judgments delivered are transmitted in an anonymous form to the CFR, whose tasks include monitoring the implementation of Article 261 bis of the Criminal Code. The authorities should also consider further, in ECRI's opinion, whether Article 261 bis might be improved or clarified in some areas, including as regards: its applicability to racist insults directed at wide categories of persons such as asylum seekers rather than specific groups; the definition of what constitutes a statement or act committed in public; and how far the article can be used in the sphere of private contractual relations.
8. ECRI drew attention to its general policy recommendation No 1 in which it stated that "governments should take measures, including where necessary legal measures, to combat racist organisations... including banning such organisations where it is considered that this would contribute to the struggle against racism.
9. There have been a number of cases brought to the courts, both at federal and cantonal level, under Article 261 bis of the Criminal Code. Rulings at the cantonal level are sent to the Federal Office of the Police for collation. Cases brought are varied, including for example expressions inciting to racial hatred on the Internet, compact disc recordings, graffiti, election posters, holocaust denial, statements by politicians, letters to the editor published in newspapers, wearing of symbols, and the publication of books with a racist content. Many of the cases concern antisemitic material. It is estimated that around half of the cases brought end in a conviction. Police forces have been encouraged to report any incidents which they suspect may have a racist connotation, and the Federal Office for the Police issues continually-updated guidelines on the application of Article 261 bis to the police, prosecutors and courts.
10. In reaction to some problems caused by extreme right-wing groups, a working group on "co-ordination and implementation of measures in the field of right-wing extremism" was set up. The group has proposed two new Criminal Code

¹ Art 261 bis penalises public incitement to racial hatred or discrimination, spreading racist ideology, denying crimes against humanity and refusing to supply a public service.

provisions covering: distinctive signs of a discriminatory attitude based on race and the public use of slogans, gestures or forms of salutation with a racist meaning (proposed Article 261 ter) and the criminalisation of the creation or participation in groups which intend to commit acts prohibited under Article 261 bis (proposed Article 261 quarter). The working group also recommended an administrative law provision to cover the seizure or confiscation of means of racist propaganda. These proposed legislative amendments are currently under consideration by the government, and it is foreseen that they may be put before the Parliament in 2004.

11. The Federal Office of the Police has also stepped up its action against right-wing extremism by strengthening co-operation with the cantonal police forces to ensure that the law in force is uniformly applied, and to closely monitor the activities of individuals and groups involved in right-wing activities, including skinhead activities and hooliganism.

Recommendations:

12. ECRI recommends that the Swiss authorities continue to monitor the application of Article 261 bis. It encourages the swift entry into force of the proposed new provisions completing the criminal law protection against racism.

Civil and administrative law provisions

13. In its second report on Switzerland, ECRI recommended that the Swiss authorities introduce relevant civil and administrative law provisions covering discrimination in all fields of life, including the conclusion of contracts in areas such as housing and employment.
14. The introduction of protection against discrimination in various fields of life into civil and administrative law is still not under consideration by the authorities, although the non-governmental sector and international bodies have called for such provisions. The position of the authorities is that the freedom of contract in the private sphere remains paramount. The extent to which discrimination exists in employment, housing and other key areas is not known, although it is reported by the non-governmental sector that obvious problems do exist, for example for Muslim women wearing the headscarf and for black Africans. Issues such as discrimination in employment are only recently being examined at the official level, for example by the newly-created Federal Service to Combat Racism.

Recommendations:

15. ECRI reiterates its recommendation that Switzerland should prepare and adopt more comprehensive civil and administrative law provisions prohibiting discrimination in fields such as housing, employment, access to public places and the provision of services. It also urges the authorities to conduct research into the extent and forms of discrimination in such fields. This research should also include, as appropriate, a gender perspective.

Specialised bodies

16. In its second report on Switzerland, ECRI recommended that Switzerland should strengthen the role and powers of the Federal Commission against Racism in line with the guidelines set out in ECRI's general policy recommendation No 2 on specialised bodies.
17. ECRI recommended the creation of the institution of the Ombudsman or similar body with powers to investigate complaints of racial discrimination, preferably with similar bodies at cantonal level.
18. The creation of the Federal Service to Combat Racism in 2002 removed a number of administrative tasks from the work of the Federal Commission against Racism, thus affording the latter a more clearly-independent role from the governmental machinery. However, its scope for providing assistance to individuals is limited to giving advice and directing persons to other bodies which might help them.
19. Two proposals concerning the creation of a general human rights commission are currently under examination by the parliament. It is not yet clear whether these proposals will be accepted or what implications the creation of such a body might have for the role of the Federal Commission against Racism. The creation of an Ombudsman body does not appear to be under consideration in Switzerland at the present time.
20. The Federal Commission for Foreigners and the Federal Commission for Refugees also exercise some of the tasks of specialised bodies in their own fields of competence, such as providing advice to the government and input into relevant legislation.
21. At the cantonal level, there are some officials responsible for dealing with questions of racism. However, it has been commented by the Federal Commission against Racism and others that there are regional gaps in the provision of structures providing advice and assistance to victims of racism and discrimination, that the structures which do exist could be improved, notably through specialised training for the staff, and that there needs to be more co-ordination of such structures at the central level.

Recommendations:

22. ECRI recommends that the authorities ensure that the further development of the Federal Commission against Racism is in accordance with the principles laid down in ECRI's General Policy Recommendation No 2 on specialised bodies to combat racism and racial discrimination at national level, particularly as regards the guarantee of the independence of this body and its competence to investigate and deal with individual complaints of discrimination.
23. ECRI is also of the opinion that the position of the Federal Commission on Foreigners and the Federal Commission for Refugees could be further strengthened by granting these bodies more independence from State structures.

24. ECRI encourages the authorities to ensure that bodies to assist and advise victims of racism and discrimination are set up at cantonal level, and coordinated at the central level.

Police

25. In its second report on Switzerland, ECRI recommended that the authorities ensure that the police provide equal treatment to all members of the public and avoid any act of racism, xenophobia, antisemitism and intolerance; that they develop formal and informal structures for dialogue between the police and minority communities and ensure the existence of a mechanism for independent enquiry into incidents and areas of conflict between the police and minority groups.
26. ECRI recommended the setting-up of an independent body to investigate complaints of police ill-treatment.
27. ECRI recommended that the subject of racism and discrimination should be included in a more systematic fashion in police training at cantonal level, both during initial training and as an on-going process, and that more active efforts should be made to recruit members of under-represented minority groups as police officers.
28. Training programmes have been put in place for police and prison officers, of which one of the aims is to reduce cases of police violence towards persons of foreign origin.
29. However, the non-governmental sector reports that police behaviour towards members of minority groups remains problematic: for example, it appears that black Africans are frequently stopped and searched – including body searches – on the street, or are taken into custody for questioning for no apparent reason, apart from the apparently commonly-held assumption that black Africans are involved in the drugs trade or in other illegal activities. Police officers are reported to treat such persons in an aggressive or disrespectful fashion, and reports of verbal and physical harassment and abuse, and humiliating and degrading treatment, are common.
30. It is also reported that in at least one city, moves towards practices of “closing-off” areas to members of certain groups have developed (“*Rayonverbot*”): thus, asylum seekers, especially young black males, for example, are strongly discouraged from entering certain areas and are subject to frequent police controls to hinder them from doing so. This practice is apparently based on the regulation on “Constraint Measures” (“*Zwangmassnahmen*”) which allows certain areas to be prohibited to certain persons under certain conditions. In other areas, police operations, mounted ostensibly to deal with the problem of drug trafficking, have in effect been targeted on particular groups, such as young black males.
31. At present, there is still no independent investigatory mechanism to look into allegations of police misbehaviour or brutality, although cases involving persons of foreign origin are brought to the attention of the Federal Office for the Police. It is reported by non-governmental organisations that victims of police mistreatment or brutality have no real possibility to report their complaints or

achieve redress, particularly given their lack of confidence in the police force as such. Moreover, it is reported that persons complaining about police mistreatment may be threatened with countersuits or with the withdrawal of their residence permit. In the case that complaints are investigated, it is commented that the present system of investigation is heavily-weighted in favour of the police officers implicated, since police officers involved are given an opportunity to consult together to present a unified version of events. Victims and their legal representatives are often not invited to attend hearings, and the prosecuting authorities often enjoy a close relationship with the police forces, thus compromising their impartiality. Additionally, many victims of misbehaviour on the part of the police lack the financial means to obtain legal assistance in bringing a complaint.

32. As regards the problem of police mistreatment of persons during forcible deportations, international bodies have continued to voice their concerns in recent years regarding restraint methods used, which have been said to present a manifest risk of inhuman or degrading treatment. A working group on the execution of expulsion orders was set up in late 2000, involving cantonal and federal authorities, and a project – “Passenger Two” was set up to ensure that uniform practices were in place in all cantons for carrying out deportations. To date, 23 out of the 26 cantons have adopted these standardised practices. As from 2004, all persons carrying out forcible deportations will have had to complete a special training course and passed an examination. Additionally, it is planned to draft a federal law to regulate deportations.

Recommendations:

33. ECRI recommends that firm measures be taken to deal with the problem of police mistreatment of persons from minority groups. A first important step would be the introduction of a system of independent investigation into all allegations of police mistreatment, be it at the federal or cantonal level.
34. Mechanisms should also be put in place to enable victims of police mistreatment to bring complaints: this might include the appointment of contact points – independent from the police force - with responsibility for receiving and following-up such complaints, the provision of free legal aid for victims where necessary, and the creation of formal and informal dialogue structures between the police and representatives of minority groups and the non-governmental sector. A public commitment from the highest level of the police forces to tackling problems and dealing severely with any police officers found to be behaving incorrectly is also crucial to help improve the confidence of minority groups in the police force.
35. Training for members of the police force to enable them to deal in a fair and equal way with all persons, including persons of foreign origin, should be stepped up, both during initial training and in on-going training courses. In particular, an end should be put to clearly-discriminatory police practices, such as stopping and searching members of certain minority groups, particularly black Africans, with no grounds for so doing.

36. ECRI strongly urges the authorities to take steps to ensure that an end is put to the practice of effectively “closing off” certain areas to certain minority groups through measures such as police controls targeted uniquely at members of such groups.
37. ECRI also recommends that measures be taken to improve recruitment of members of minority groups, particularly persons of immigrant origin, in the police. Mechanisms for dialogue between the police and minority groups, in order to identify any areas of conflict and find common solutions, should also be encouraged.

Antisemitism

38. In its second report on Switzerland, ECRI recommended that the situation as regards antisemitic feelings in Switzerland should be closely monitored. Continued efforts should be made to combat antisemitism, for example through specific teaching on this issue in schools, and through a commitment on the part of politicians in speaking out against any expressions of antisemitism in political or public life.
39. It is reported by representatives of the Jewish community that antisemitism may be becoming more overt following contemporary world developments, notably the situation in the Middle East. The recent public debate within Switzerland concerning the ritual slaughter of animals was also coloured by antisemitic discourse. This is reflected in the way in which the newspapers report on certain current world events, in letters to the editor of newspapers, and in some incidents such as graffiti attacks on synagogues. The police have warned Jewish communities to step up security around schools and synagogues, while it is reported that members of the Jewish community wearing visible signs of their religion, such as the kippa, feel particularly vulnerable at the present time. As mentioned above, many of the cases brought under Article 261 bis of the Criminal Code concern expressions of antisemitism.

Recommendations:

40. ECRI recommends that the authorities keep the situation as regards antisemitism under close surveillance, and that awareness-raising and educative measures be developed, especially within schools but also within the general public, to combat this phenomenon.

Muslim communities

41. Over 300 000 Muslims are currently living in Switzerland, making this the second largest religious community in the country after the Christian community. Representatives of the Muslim communities have indicated that although hostility towards Muslims may not be overtly-expressed, problems exist when Muslim communities try to organise places of worship, meeting places, or burial grounds, as some local communities are reluctant to grant planning permission for such projects. There is therefore a lack of proper places of worship and centres in which Muslims can meet: this situation is

reported to impact particularly negatively on Muslim women, as the existing places of prayer and meeting (rooms in flats, garages etc) are too small to allow both women and men to attend.

42. It is further reported that Muslim women wearing the headscarf face discrimination in finding work and renting accommodation and are sometimes harassed on the streets. Prejudice and stereotypes are also manifested on occasion in the decisions made on citizenship requests at the communal level.

Recommendations:

43. ECRI recommends that the authorities take steps to combat prejudice and discrimination against Muslim communities, particularly as regards practical issues connected with the practice of their religion. ECRI draws attention to its General Policy Recommendation N° 5 on combating intolerance and discrimination against Muslims, which sets out guidelines in this area.

The Jenisch, Sinti and Roma communities

44. In its second report on Switzerland, ECRI recommended that the authorities identify means to ensure that the cantonal system does not lead to discrimination against travelling Jenisch, particularly in the field of employment and education.
45. A new federal law on itinerant trade came into force on 1 January 2003, replacing and harmonising the numerous different regulations existing at cantonal level. The situation for travellers is now improved in that they can obtain a five year trade permit which is valid for all cantons, rather than having to apply for a new permit in each canton.
46. The provision of sufficient permanent and transit stopping places for travellers remains a problem, in a context where the communities are reporting an increasing interest on the part of young people in continuing the traditional way of life. It is also commented by representatives of the communities involved that the new system of trade permits, while positive, is also likely to increase the numbers of travellers from other countries coming into Switzerland, thus exacerbating the problem of lack of stopping places.
47. Although some cantons have constructed sites in recent years, other cantons or communes have not given planning permission for sites to be built; in many cases, even if the political will to create sites is present, the local population votes against the plans. The current lack of sites means that travellers are often forced to stop without permission, in areas without any sanitation facilities. The Foundation "Protecting the future of Swiss Travellers" has estimated that 30 extra permanent sites and 30 extra transit sites would be necessary to meet the demand: the Foundation itself is trying to promote the creation of sites and to influence zone planning in order to ensure that the needs of travellers are specifically taken into account.
48. The situation as regards schooling for children of travelling families seems to have improved in recent years, with more schools accepting that children attend classes during the winter and work by correspondence from March to October.

Such arrangements are however made on an individual “good-will” basis, with no obligation on schools to accept the system. There is practically no teaching of the Jenisch, Sinti or Romany languages within the school system. Beyond the compulsory school level, it is reported that young travellers do face difficulties in obtaining apprenticeships due to prejudices on the part of potential employers.

Recommendations:

49. ECRI recommends that the authorities take further steps to ensure that sufficient permanent and transit sites be provided across Switzerland for members of the travelling communities. In particular, it is important that the needs of this population are taken into account during the planning stage of zone development, respecting the principle that developments should not lead to the separation of travellers from the majority population through the creation of “ghetto” areas.
50. ECRI feels that further improvements could be made to ensure that all children from travelling families are guaranteed a high-quality education. For example, the provision of teachers who could visit travelling children to support their education during the summer months might be considered. Ways of overcoming barriers to the further education and training of young travellers, including their access to apprenticeships, should also be examined.

Asylum seekers and refugees

51. In its second report on Switzerland, ECRI stressed that immigrants and asylum seekers, even if they are considered to be sejourning illegally in Switzerland, should not be treated as criminals, and that any measures taken with regard to such persons should reflect this approach.
52. ECRI recommended that the right to appeal against negative decisions regarding asylum applications should be backed up with State-funded legal aid where necessary.
53. ECRI noted that awareness-raising and educative measures, both among the general public and within key institutions such as the police, are most important in rectifying misconceptions and combating prejudices against asylum seekers and refugees.
54. The law on asylum was revised in 1999. Inter alia, this revision of the law introduced the concept of “persons in need of protection” for groups of designated persons fleeing war who are then granted temporary admission into Switzerland.
55. Persons who are fleeing threats and persecutions that do not stem from a state or state organ cannot, under the present law, be granted asylum. They may be granted temporary permission to stay: however, it is commented by the non-governmental sector that this status can leave persons in a very precarious situation for long periods of time: they are not allowed to leave Switzerland, are excluded from integration measures, and are disadvantaged on the labour market.

56. The issue of asylum and refugees remains controversial in political and public discourse. A proposal from a right-wing political party to severely restrict the right to asylum was put to a popular vote on 24 November 2002, and was only defeated by a narrow margin. New amendments to the Law on Asylum are currently before the Parliament: non-governmental organisations report that these amendments foresee generally more restrictive rules. The Federal Office for Refugees makes efforts to raise awareness among the general public and among the media in order to counter prejudices and hostility against asylum seekers, although it has been commented by non-governmental organisations that the way in which the Office presents statistics concerning numbers of asylum seekers in Switzerland compared to other countries gives a false picture of the situation and has been used by certain political strands to advocate stricter regulations. Non-governmental organisations note that the general orientation of policy in this field tends towards a negative image of asylum as a system which is misused and which should be increasingly restricted.
57. As regards the processing of asylum applications, non-governmental organisations report their concern at the way in which persons requesting asylum at their point of arrival are treated by officials, notably at Zurich Airport, where they report that the airport police behave in a hostile and discouraging manner to persons wishing to make an asylum application. It is further reported that the “accelerated procedures” which are applied in some cases at the airport and at the reception centres, do not provide a sufficient amount of time – 24 hours – to lodge an appeal with access to correct legal assistance, and are also liable to lead to decisions being taken without sufficient attention being paid to the individual circumstances of the person claiming asylum. The practice of charging a fee of 600 Swiss francs for appeals which are considered by the judge to be unfounded or with no chance of success has also been criticised as a weakening of the right of appeal.
58. Since the publication of ECRI’s second report, “deportation detention centres” have been set up for persons awaiting deportation from the country. Persons held in such centres, which are in the competence of the cantons, include foreign citizens having served prison sentences and whose residence permits have consequently been withdrawn; some asylum seekers whose personal data is uncertain and whose claims have been accordingly dealt with immediately in asylum reception centres; asylum seekers whose applications have been refused and who have not left the country voluntarily; and some persons found to be in Switzerland without the legal right to stay. Many persons only stay overnight in the detention facilities; however, some may stay for several months while awaiting the final outcome of their case. Although the federal authorities try to influence cantonal decisions as regards detention, notably by refusing to bear the costs of repatriation if a minor has been detained without proper judicial control, non-governmental organisations have noted that it is difficult to gain information about the actual practices and conditions which exist in the centres.
59. Procedures on free legal aid have been developed in Switzerland over the last few years based on cumulative conditions: the person in question must be in need; the case must not be devoid of any chance of success; and there must be a real necessity for legal assistance in the case. Asylum seekers can avail themselves of the possibility of requesting free legal aid; however, no data

exists on the extent to which they do so or on how many applications for legal aid made by asylum seekers fulfil the above-mentioned criteria.

Recommendations:

60. ECRI recommends that the Swiss authorities take steps to counter the generally-negative climate of opinion surrounding the issue of asylum seekers and refugees. In particular, politicians and the media should be further sensitised as to the need to address the question in a balanced fashion and without resorting to language and propaganda which are likely to exacerbate public prejudice and hostility.
61. As regards the asylum procedure, ECRI stresses the need to ensure that the introduction of accelerated procedures does not represent a weakening of the rights of asylum seekers, inter alia to have their case considered on an individual basis and on its own merits, and to lodge an appeal against negative decisions with sufficient time and access to legal assistance to make a proper case.
62. ECRI recommends that the Swiss authorities closely monitor the use of detention with respect to asylum seekers and other persons awaiting deportation, and considers that the establishment of a control body responsible for overseeing detention centres at the federal level would be most opportune, coupled with increased possibilities for representatives of the non-governmental sector to monitor detention decisions. ECRI considers that detention should be resorted to as infrequently as possible and that length of stays in the facilities should be kept to the strict minimum, with frequent judicial control. ECRI also recommends that staff working in the detention centres be given specific training in the field of racism and discrimination.

Education

63. In its second report on Switzerland, ECRI stressed its opinion that any moves towards segregated schooling for children who do not have sufficient knowledge of the language of instruction are contrary to international law and should be discouraged, and recommended that additional measures should be taken to counter any problems which may exist in the field of education and which may have given rise to such initiatives.
64. It appears that at the present time, there are no specially-created segregated classes for children of immigrant origin such as those which had been set up during the period 1997-2001 in a few primary schools in in some cantons on the request of Swiss parents. ECRI is pleased to note that the Conference of Cantonal Directors of Education and other bodies have spoken out in favour of integrating children of immigrant origin into the correct school class as quickly as possible, recommending measures to ensure the success of such an approach, such as early integration of children of immigrant origin into kindergartens, additional language support, and special training for teachers in dealing with diversity.

65. The policy as regards the integration of children of immigrant origin into schools varies widely from canton to canton. In some cantons, newly-arrived immigrant children are placed in integration classes which prepare them to integrate into the regular class in their second year. Other cantons place children of immigrant origin in classes for children with special needs in order to provide them with assistance in learning the local language. However, it has been reported that although the objective of such classes is to help children integrate into the regular classes as soon as possible, children of immigrant origin are sometimes placed in special classes alongside children with educational difficulties, or are kept in special classes for too long, and thus may fall behind their peers and subsequently experience difficulties in integrating into the correct level of class. One study has shown that over 50% of children in special classes for children with educational difficulties are of immigrant origin.
66. Although no sustained data concerning the country as a whole exists, different studies have indicated that children of immigrant origin tend to have a lower level of school achievement than their Swiss peers, and for example are over-represented in lower level vocational secondary schools rather than grammar schools. Some efforts have been made to offer vocational training to the growing numbers of young people who arrive in Switzerland after the age of sixteen; however, it appears that such young people nevertheless face difficulties in continuing their education. A working group of the Conference of Cantonal Directors of Education has been working on the issue of school achievement and integration of migrant children.
67. Some cases of children of asylum seekers being refused access to schools have been reported: the Conference of Cantonal Directors has intervened in such cases. Children of persons residing in Switzerland illegally have the right to attend school; again, the Conference of Cantonal Directors has intervened in cases where cantons were proposing that schools should inform the authorities of the illegal status of the parents of their pupils.
68. Teaching on the language and culture of the countries of children of immigrant origin is part of the school curriculum in around one third of cantons but is organised by the associations and home countries of the minority groups in question, and is not supported financially by the Swiss authorities. The draft law on national languages and understanding between linguistic communities provides that cantons may receive financial assistance from the Confederation in order to organise, for the benefit of those persons whose mother tongue is not a national language, lessons on the language and civilisation of their country of origin given in their mother tongue.
69. Human rights teaching, including courses on tolerance and concerning racism and discrimination are included in the school curriculum. It is reported however that differences exist between cantons as regards the degree to which such education is provided. The Conference of Cantonal Directors is also working to improve training for teachers in teaching anti-racism and human rights.

Recommendations:

70. ECRI recommends that further steps be taken to ensure that children of immigrant origin enjoy equal opportunities in education. It recommends that the channelling of children of immigrant origin into special schools prior to their integration into normal classes be closely monitored, in order to ascertain what problems might exist and what are the best practices to be followed so that children of immigrant origin are integrated as quickly as possible into the correct school class. Further investigation into the differences in educational achievement between Swiss and non-Swiss children should also be carried out. ECRI recommends further training for teachers in dealing with diversity in their classes.
71. ECRI considers that the authorities should undertake to support financially and logistically teaching in the language and culture of children of immigrant origin.
72. As regards human rights teaching and teaching on racism and discrimination, ECRI feels that it should be ensured that good teaching in these issues is provided in all schools and at all levels of schooling. Further training for teachers in these subjects would be most opportune.

Monitoring the situation

73. In its second report on Switzerland, ECRI recommended that the Swiss authorities collect data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism, xenophobia, antisemitism and intolerance.
74. A frequently-cited problem in Switzerland remains the lack of information and data concerning the extent of discrimination and racism, and the situation of different minority groups in the various fields of life. One barrier to the collection of such data is the cantonal system, which means that available information may be uneven and not comparable. Some steps have been taken to collate on a federal level information on criminal cases with a racist connotation which have been brought at the cantonal level. However, in most areas, no systematic collection and collation of data exists.

Recommendations:

75. ECRI reiterates its recommendation that the Swiss authorities collect, in accordance with the principles of data protection and the voluntary self-identification of persons concerned, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism and discrimination. Such monitoring should take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination.

Acquisition of citizenship

76. In its second report on Switzerland, ECRI recommended that the Swiss authorities identify procedures, in close collaboration with cantonal and communal authorities, to ensure that the granting of citizenship at all three levels of the Swiss system is applied in a clear, coherent and non-discriminatory fashion, and that appeal mechanisms exist to remedy any discrimination based on non-justifiable criteria such as origin or religion.
77. ECRI encouraged other cantons to follow the good practice of certain cantons in facilitating naturalisation for young people, accompanied where necessary by awareness-raising campaigns and education among the general population to encourage acceptance of these changes. ECRI also encouraged the federal authorities to continue in their efforts to facilitate the naturalisation process for young non-citizens and for other non-citizens with long-term residence in Switzerland.
78. A new citizenship law is currently under preparation which aims to facilitate the granting of citizenship for second and third generation persons of immigrant origin. This law would provide that second generation persons of immigrant origin may gain citizenship on certain conditions, one of which is to have completed five years of education in Switzerland, while third generation persons of immigrant origin should be granted citizenship at birth. It is foreseen that this law, once it is accepted by the Parliament, will be put to popular vote in 2004 if such a referendum is requested; however, some strands of public and political opinion are apparently not in favour of further facilitating naturalisation.
79. Problems continue to be raised in connection with the three level system of granting citizenship, whereby citizenship must be granted at the communal, cantonal and federal level. Regulations in force vary widely across the different communes and cantons, and the system of popular vote on citizenship requests which exists in a number of communes continues to cause controversy: for example in a recent case where a commune voted against granting citizenship to all applicants from the Balkans while accepting all applicants from Western European countries. Presently, no appeal is possible against such decisions by popular vote: however, the draft law on citizenship foresees that such decisions should be subject to judicial control at the cantonal and federal level.

Recommendations:

80. ECRI hopes that the revised law on citizenship facilitating naturalisation for second and third generation persons of immigrant origin will be passed by Parliament as quickly as possible. Given the apparent reticence of some parts of the population concerning such facilitation of naturalisation, ECRI feels that the authorities should make every effort to raise awareness among the general public concerning the desirability of facilitating citizenship for persons of immigrant origin with a view to the full integration of society.

81. ECRI also urges the authorities to continue to examine how to improve the current system for the granting of citizenship in order to ensure that no room for discriminatory and arbitrary decisions exists. In this respect, ECRI considers that at the very minimum, appeal possibilities should be put in place to allow applicants to query the legality of decisions taken by popular vote or by local political bodies.
82. ECRI considers that, particularly given the long periods necessary for most non-citizens to gain citizenship, the extension of voting rights at the local and cantonal level to long-term residents – a system which exists in a few cantons – is a good practice which should be further extended.

Climate of opinion

83. In its second report on Switzerland, ECRI encouraged politicians and other opinion leaders to refrain from utilising issues such as asylum and non-citizens and to take a firm stand against any manifestations of intolerance or xenophobia towards non-citizens. Representatives of public bodies with responsibility for dealing with issues of non-citizens should also refrain from using language or making associations which might create prejudices or foster a climate of intolerance towards non-citizens.
84. ECRI was also of the opinion that an increased recognition of modern Switzerland as a multicultural society, where new forms of plurality co-exist with traditional ones, would contribute greatly to solving many of the problems outlined in its second report.
85. The authorities have taken some steps in recent years to raise awareness of the problems of racism and discrimination within Swiss society. The creation in 2002 of the Federal Service to Combat Racism within the governmental machinery is a positive sign that the authorities are acknowledging that problems of racism and discrimination do exist within Switzerland and need to be addressed by the authorities. This service is responsible, *inter alia*, for administering a fund to support projects against racism: a special emphasis has been given to supporting projects in schools and training projects for key groups in society such as social workers, teachers and health workers. The inclusion of integration measures within the new Law on Foreigners, with an emphasis on the duty of the whole of society to integrate, is also a positive sign that the need to treat foreigners as a part of Swiss society may be starting to be recognised; the new legislative proposal to facilitate the acquisition of citizenship for second and third-generation non-citizens is also a step forward.
86. As mentioned elsewhere in this report, signs of intolerance and xenophobia continue to manifest themselves in political and public discourse, notably as regards the issue of asylum seekers and the position of non-citizens in Switzerland. It is commented by non-governmental organisations that the reaction of the authorities to signs of hostility within society seems to be to adopt more restrictive rules and legislation concerning non-citizens and asylum seekers.

Recommendations:

87. ECRI considers that the authorities should continue to raise awareness within society of the problems of racism and discrimination which exist and of the need to combat such phenomena. It urges the authorities to react firmly against any manifestations of racism or xenophobia, be they in the discourse of certain politicians and political parties, or in the behaviour of public officials, and to refrain from reacting to signs of hostility within segments of the population through increasingly restrictive rules and legislation which might seem to endorse such sentiments.

II. SPECIFIC ISSUES

Racism and discrimination against black Africans in Switzerland

88. A recent worrying development is the rise in racism and discrimination towards black Africans living in Switzerland. Such hostility is displayed in public opinion, political and media discourse, and also in the behaviour of officials, notably the police. It appears that there is a general stigmatisation of black Africans as being involved in the drug trade and in other illegal activities such as prostitution, and this stigmatisation has had an extremely negative effect on the daily life of black persons living in Switzerland. The situation has worsened in this respect since the process leading to the referendum in November 2002 on the further restriction of the right to asylum, since the public debate around this issue focused on the alleged involvement of black asylum seekers in the drugs trade.
89. Concerns about the behaviour of the police towards black Africans, notably young men, have been raised earlier in this report (see above, Police) and are widely-held by the non-governmental sector to be a key problem. Black persons in Switzerland are subject to police controls based, apparently, solely on the colour of their skin, and experience verbal and physical abuse and harassment on such occasions. They are also disproportionately singled out for controls in railway stations and in airports; for example, it is reported that black persons are singled out to be photographed for computer identity checks at the airport. Practices such as the effective "closing off" of certain areas to black Africans, particularly young black males, have also been mentioned above.
90. It also appears that black Africans are disadvantaged in fields such as further education and employment, due in part to the difficulties they face in gaining recognition of their qualifications obtained abroad.
91. The black communities have recently started to organise themselves in order to bring their situation to public attention and to claim their rights. However, representatives of these communities have reported that they face difficulties in obtaining public funding for their initiatives and projects, and that public funds tend to be directed towards longer-established non-governmental organisations.

Recommendations:

92. ECRI recommends that the authorities put in place a strategy to counter hostility and discrimination against black Africans in Switzerland. Particular emphasis should be given to ensuring that public officials, and particularly the police, do not act in a discriminatory or wrongful fashion towards members of this group, and that actions taken to combat drug trafficking or other criminal activities do not stigmatise or lead to discrimination against whole groups of persons. In particular, procedures such as identity checks, taking into police custody and body searches – often carried out on the street - should not be carried out solely on the basis of skin colour. As outlined previously, mechanisms – such as local contact points - should be set up to ensure that victims of mistreatment are able to bring complaints, and an independent body should be set up to ensure that such complaints are properly investigated. Training for the police to avoid discriminatory practices of the kind mentioned above should also be stepped up.
93. ECRI also stresses the importance of empowerment and capacity-building among the black communities, and encourages the authorities to make particular efforts to support initiatives coming from the communities themselves. In particular, ECRI is of the opinion that the black communities might be very valuable in helping to deal with the problems faced by black asylum seekers, many of whom are minors, and who may be drawn into criminal activities.

Situation of non-citizens residing in Switzerland

94. In its second report on Switzerland, ECRI noted that while the old “three-circle” policy governing the granting of residence permits to different categories of foreigners depending on their country of origin and “capacity for integration” has now been abolished to be replaced with a “binary admission policy”, concerns have been expressed that the underlying philosophy of “capacity for integration” remains unchanged, which may mean that possible discrimination continues against certain non-citizens.
95. ECRI urged the Swiss authorities to ensure that the residence permits of non-citizens having resided for some time in Switzerland are only withdrawn under exceptional and clearly-defined circumstances, and that adequate recourse to appeal against such decisions is made available.
96. Since 1 June 2002, an agreement on the free circulation of persons has been in force between Switzerland and the European Union. This agreement regulates the statute of European Union citizens in Switzerland: such persons are now in an improved position in Switzerland as regards, for example, working conditions and family reunification.
97. A new law on foreigners has been under parliamentary review since the spring of 2002. Thus, including at the present time when the previous law on foreigners of 1931 is still in force, a so-called “binary admissions policy” is in force.

98. While generally welcoming the agreement with the European Union as a positive development for European Union citizens residing in Switzerland, many non-governmental organisations, and the Federal Commission against Racism, have spoken out against the new “binary” system as being discriminatory and likely to exacerbate exclusion and racism within Swiss society.
99. The new law on foreigners limits admission to Switzerland on work permits principally to highly-qualified specialists. Employers wishing to employ such foreign specialists apply for a long or short-term work permit to the canton, which allocates permits in collaboration with the Federal Office for Immigration, Integration and Emigration, on the basis of quotas. It is reported that the concept of “potential for integration” is also an underlying factor taken into account in admissions and work permit decisions. The new law on foreigners in fact explicitly covers integration measures, defining integration as a two-way process involving the whole of society.
100. The new “binary system” has been particularly criticised on the grounds that it discriminates between different categories of foreigners within the country. For example, conditions for family reunification are more favourable for European Union citizens than other foreigners, the continuation of residence permits for married non-EU citizens are dependent on their common residence with their spouse for at least five years; and European Union citizens have more freedom to change their job and canton of domicile than non-European Union citizens. Furthermore, the issue of “integration” is not raised in connection with European Union citizens.
101. In more general terms, it has been commented that the “binary system” is likely to exacerbate prejudices against foreigners covered by the Law on Foreigners and to lead to feelings of resentment among the persons concerned.
102. The concerns expressed in ECRI’s second report as regards the different types of residence permit remain valid. In particular, discretionary room remains for the Federal Office for Immigration, Integration and Emigration to decide on the withdrawal of residence permits for sentenced criminals or persons who receive social benefits over an extended period of time. It is also reported by the non-governmental sector that persons holding short-term residence permits are particularly vulnerable to the withdrawal of their permits, and so, for example, often hesitate in bringing complaints against the authorities for fear of losing their residence status. ECRI notes in this respect that a revision of the constitution has provided for guaranteed access to justice to be enshrined in constitutional law. In particular, this provides for recourse to a court in all cases, including those covered by the Law on Foreigners. The provisions for implementing this revision have not yet entered into force.
103. The situation of persons residing in Switzerland without the requisite residence and work permits (“sans papiers”) is also of concern. One estimate puts the numbers of these persons at least 100-200 000. Many of these persons are working in private houses or the service industry, in construction and agriculture, or as sex workers. It has been commented that the entry into force of the new Law on Foreigners, which foresees the entry and stay in Switzerland of principally highly-qualified persons, is likely to further increase the numbers of foreign persons working illegally in Switzerland, since the labour market reality is that most of the low-paid and low-status jobs available are carried out by non-citizens.

104. The issue of persons residing in Switzerland without residence and work permits has only become a topic of public debate in recent years. Differences in the ways in which cantons deal with the issue have been noted, but generally the non-governmental sector reports that this category of persons is very vulnerable, with limited access to health care, subject to discrimination and exploitation on the labour market. Female workers are particularly at risk of exploitation.

Recommendations:

105. ECRI recommends that the authorities reconsider the impact of the “binary system of admissions” on the treatment of different groups of non-citizens once in the country, particularly in fields such as family reunification.
106. ECRI reiterates its recommendation that the authorities take steps to ensure that the withdrawal of residence permits is strictly regulated and subject to judicial control. In particular, it considers that the withdrawal of residence permits on the grounds that persons have been dependent on State benefits for prolonged periods, or the withdrawal of residence permits as an additional penalty for persons convicted of crimes should be as limited as possible and closely regulated.
107. ECRI encourages the authorities to take steps to improve the position of persons residing in the country without the requisite permits.

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APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Switzerland

ECRI wishes to point out that the analysis contained in its third report on Switzerland, is dated 27 June 2003, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Switzerland was subject to a confidential dialogue with the Swiss authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Swiss authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

ECRI - Third report on Switzerland (2003) Position of the Swiss Government

In accordance with ECRI's country-by-country procedure, the national liaison officer appointed by the Swiss authorities was able to have confidential discussions with ECRI. A detailed analysis of the draft text on Switzerland made it possible to pinpoint a number of inaccuracies in the way problems were perceived. Unfortunately, only a small proportion of the corrections and additions suggested was taken into account. We therefore consider it important to set out the Swiss Government's position on a few points in the report explicitly.

“Police” (paragraphs 28-36) and “Racism and discrimination against black Africans in Switzerland” (paragraphs 88-93)

We reject the assertion underpinning the report to the effect that the Swiss police behave in a racist, discriminatory and violent way towards minorities, in particular black Africans.

The criticisms are often very general, with no substance to them, and without foundation, and concern cases which have not been examined in detail by the commission responsible for preparing the report. The cantonal police only arrest people involved in drug trafficking, including black Africans, when there are well-founded suspicions. All the procedures take place in accordance with the relevant statutory provisions. Measures are not, under any circumstances, taken arbitrarily and police practices are not geared primarily to asylum seekers and black Africans or clearly designed to exclude them, keep them away from certain areas or humiliate them. The “constraint measures” mentioned in the draft report (see paragraphs 30 and 31), the *Rayonverbot* (the practice of closing off certain areas to specific groups), forcible deportation, stays in detention centres for people awaiting deportation, and so on are the result of a decision by a court or the authorities and are based on the legislation in force. The relevant civil servants' decisions are documented, open and verifiable. A complaint may be lodged against any decision. The same is true of the way the airport police deal with potential asylum seekers, which was criticised in the report. The procedures and time limits applied are likewise based on the relevant legislation.

The police are well aware that, given the numerous police operations carried out round the clock every day, mistakes may sometimes occur. But such issues as xenophobia and police violence are systematically covered during basic and in-service police training. They are dealt with in detail and with due diligence in the initial and further training courses for the cantonal police. In certain cantons, special efforts have been made to ensure that police officers are better prepared to deal with the difficult situations with which they are increasingly confronted in the performance of their duties.

Paragraph 48

Even though there are a few Roma/gypsy families, by far the majority of Swiss travellers belong to the *Jenisch*, a native community. It should be pointed out that *Jenisch* is a sociolect with a German grammatical structure. Swiss travellers use the language only among themselves and do not generally want people outside their group to master it. No attempt is therefore made to teach *Jenisch* in schools. Priority is currently given to the preparation of teaching aids - if possible in the form of games - designed to help travellers' children learn *Jenisch* within their families.

As for the children's schooling, it should be pointed out that travellers do not all hold the same views on the subject. By and large, their representatives are satisfied with the existing situation, which allows children to accompany their travelling parents

during the summer while being supervised and having their progress monitored from a distance by teachers.

Paragraph 56

We cannot accept the assertion that the Federal Office for Refugees presents statistics comparing the situation with that in other countries in such a way as to give “a false picture of the situation”. In fact, practices for recording asylum statistics differ from one host country to another, which makes international comparisons difficult. Accordingly, the Office prefers to describe the various methods used to produce its figures clearly and openly rather than simply refraining from all international comparisons.

Situation of non-citizens residing in Switzerland (paragraphs 94, 98 and 99)

In 1998 the Federal Council issued an order replacing the much-criticised “three-circle” policy with a “binary admission policy”. The new Foreigners Bill provides that this policy should in future be enshrined in law. As a result of the entry into force, on 1 June 2002, of the agreement on the free movement of persons between Switzerland and the EU countries, the admission of labour from other countries is, as a rule, confined to persons with qualifications lacking on the Swiss and European markets. Exceptions are possible in the case of family reunion or training visits or on serious humanitarian grounds. These exceptions account for the bulk of annual admissions (some 65,000 people in 2002, accounting for 63% of total immigration). The agreement on the free movement of persons is part of a vast system of agreements obliging all signatory states to accept, as a priority, nationals of the signatory countries and to treat them in the same way as their own nationals. Neither the Constitution nor public international law obliges the authorities to extend these mutual contractual obligations to nationals of countries with which Switzerland has not signed an agreement and is not bound by the principle of reciprocity. The instructions concerning admission are applicable in the same way to all nationals of third countries, regardless of their nationality.

The criticisms levelled are not backed up by experts in national law and public international law. The case law of the European Court of Human Rights (*Abulaziz, Cabales and Balkandali v United Kingdom*, Series A N° 94 paragraph 84) confirms, moreover, that states granting preferential status to their nationals and to nationals of states with which they have special relations are not committing illegitimate acts of racial discrimination. Attention is also drawn to the fact that the United Nations Committee on the Elimination of Racial Discrimination has not found fault in any way with this binary admission model.

All the EU and EFTA countries have admission and residence regulations that are far removed from the principles of the free movement of persons. In particular, there are the European Commission proposals for common regulations on the admission and residence of persons from third countries. These proposals are comparable with the new Foreigners Bill. The legal status of foreigners from a third country who are allowed into Switzerland is distinctly better under this Bill (particularly in terms of family reunion and geographical and occupational mobility) than under the Foreigners Act currently in force, notably because account has been taken of the agreement on the free movement of persons signed with the EU.

The admission of skilled labour from third countries is restricted to people with qualifications that are lacking on the labour market in Switzerland and the EU member states. The provision in question is designed to ensure a balance in the employment market and to improve its structure. Moreover, it has been proved that skilled people integrate more quickly into the labour market and society. The selection is therefore

based on qualifications and not nationality. The qualifications criterion is not, however, applied in the case of family reunion and other special immigration cases (which account for the bulk of immigration every year).

Paragraph 100

Under the current regulations, the spouse's right of residence until a permanent residence permit has been granted depends on how long the couple have been married (in the case of someone married to a Swiss person) and how long they have been living together in wedlock (in the case of someone married to a foreigner). If the marriage breaks down and a return to the country of origin cannot be envisaged, because it would be too harsh a prospect, the residence permit may be extended at any time. After 5 years, the persons concerned are generally entitled to obtain a permanent residence permit (except in the case of spouses of persons with a temporary but not a permanent residence permit, in which case no decision is taken to send them back either).

The Foreigners Bill provides for substantial improvements in the legal status of foreigners allowed in from third countries in comparison with the Residence and Settlement of Foreigners Act (further to the agreement on the free movement of persons), particularly in respect of family reunion and occupational and geographical mobility. For instance, foreigners with a temporary residence permit, including students, are now entitled to family reunion. The possibility of reunion is also going to be introduced for short stays. It was decided, however, not to introduce regulations similar to those in the agreement on the free movement of persons, essentially because of the federal structure in Switzerland, the effects such a measure would have had on its demography and integration policy and, finally, the lack of reciprocity. The differences in legal status are therefore based on objective factors and hence do not constitute discrimination within the meaning of Article 8 of the Swiss Constitution (see also the comments concerning paragraph 98).

The new Foreigners Bill is therefore applicable to nationals of EU/EFTA member states and their families only secondarily, in the few cases where the agreement on the free movement of persons does not contain other provisions or when the provisions in the Bill are more favourable. Nationals of EU/EFTA member states will therefore benefit from the same integration measures as those from third countries.

Paragraph 95

Some 75% of foreigners living in Switzerland possess unlimited residence permits which are not subject to any conditions. This assures them of great legal certainty as well as complete economic freedom. The permit may be withdrawn only in exceptional cases clearly specified by law. There are effective means of appeal against all decisions concerning temporary and permanent residence permits. If the person concerned can argue his or her right to be present in the country, the appeal may even go right up to the Federal Court (in the case of a person with a temporary residence permit or one who has submitted an application for family reunion, for instance).

Paragraph 103

The binary admission system is still in force (as mentioned in connection with paragraph 97). The entry into force of the new Foreigners Act will therefore have no effect on the number of foreigners present in Switzerland illegally.

Bern, 24 November 2003

