

## Statement delivered at the pre-session of the Universal Periodic Review of Switzerland (4th cycle)

December 1st, 2022

Excellences, ladies and gentlemen, dear colleagues,

The presentation of the Geneva Bar Association (or the Association) will consist of a brief critical analysis of the Swiss legal framework and of judicial practices in the fight against racial discrimination.

To begin with, two words of introduction:

The Geneva Bar Association is the professional association gathering the majority of lawyers and trainee lawyers of the canton of Geneva. It contains several commissions, including the Human Rights Commission, which submitted this summer a report for the Universal Periodic Review of Switzerland, in collaboration with the Geneva section of the Swiss League for Human Rights (LSDH-GE).

First of all, it is worth recalling some of the recommendations that were made to Switzerland during the previous reviews and that are relevant for our purposes. The member States that made these recommendations are shown on the screen. It was recommended to Switzerland to:

1. Adopt a federal law on the prohibition of racial discrimination;
2. Revise art. 261bis of the Swiss Penal Code, to which I will return in a few moments;
3. Adopt a clear and comprehensive definition of racial discrimination;
4. Ensure/improve training of justice actors to prevent acts of racial discrimination on their side

In light of these recommendations, the Geneva Bar Association would like to share its analysis and observations based on the practice and expertise of several of its members. Indeed, the Association neither has the capacity to, nor aims at collecting disaggregated data on the topic. However, it believes that certain judicial practices observed for years by many of its members are sufficiently recurrent to raise legitimate concerns about the State's compliance with its international obligations in this area.

Concerning the legal framework, to date only article 261bis of the Swiss Criminal Code punishes racial discrimination. However, as it has been pointed out many times at the national and international levels, this article poses numerous issues, which I do not have the time to go into. I will therefore only mention, for example, the condition of "publicity" contained in this legal provision, which means that in order to be considered as falling within the scope of "racial discrimination", an action must either have been committed in public or concern a service intended for public use. This means that for this reason many other violations notably covered by article 1 paragraph 1 CERD – will not be penalized in Switzerland.

Even when art. 261bis of the Swiss Criminal Code is applicable, the procedure for victims of racial discrimination is fraught with difficulties. For example, they have to bear the burden of proof. Such burden must be put in comparison to the fact that the police's word has increased evidential value. Therefore, when the perpetrator of discriminatory comments/actions comes from the police forces, it will become difficult - if not impossible - for the victim to provide evidence that could counterbalance the word of the perpetrator and/or the word of the perpetrator's colleagues, who may have witnessed the violation but who, quite frequently, will deny the occurrence of such violation.

We thus see that the Swiss legal framework clearly offers insufficient legal remedies for victims of racial discrimination, which is not compliant with international human rights law and with the recommendations issued to Switzerland on this subject.

Concerning the practices of the authorities towards individuals, the Geneva Bar Association focuses its findings on the canton of Geneva and observes that a particularly repressive climate prevails towards certain ethnic groups. For instance, defendants of (real or perceived) African or Arab descent will often be subject to increased severity in the sentences that will be requested or pronounced against them. The

situation get even worse if these defendants are undocumented or in a deprived situation. Defendants of (real or perceived) African or Arab descent are also at increased risk of excessive pre-trial detention, even for minor offences. Some graphic examples of this can be found in our report.

As for the legal framework that criminalises panhandling in Geneva, it actually presents itself as a veiled form of repression against Roma populations, which was the subject of an analysis by the LSDH-GE in our report, to which I refer you again.

Complaints of racial discrimination are too rarely investigated, and the few sentences handed down are rarely of a deterrent nature.

In addition, many members of the Geneva Bar Association have witnessed inappropriate and even overtly racist comments made by authorities against their clients. It is worth noting that some members of colour of the Association have themselves been the subject of such comments.

The practices of the Geneva criminal authorities are thus marred by numerous violations of the rights of persons of colour and by the insufficient access to justice.

For this reason, the Geneva Bar Association aligns with the recommendations made in previous UPRs which are shown again onscreen and which I will not repeat. The Association also makes 2 additional recommendations for the recommending States to address to the Swiss State:

1. Reduce/reverse the burden of proof for victims of racial discrimination: this would be in line with the CERD case law as established in particular in the *Gabaroun v. France case*;
2. Revise the legislation to make the racist/discriminatory motivation of an offence an aggravating circumstance of that offence.

Thank you for your attention.