

Council of Europe contribution for the 28th UPR session (6-17 November 2017) regarding Switzerland

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

News flash concerning the publication of the [report](#) on the April 2015 periodic visit to that country.

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

On 16 October 2015, Commissioner Muižnieks published a [letter](#) he had sent on 23 September 2015 to Mr Ueli Maurer, Federal Councillor, Head of the Federal Department of Defence, Civil Protection and Sport, concerning Switzerland's draft law on intelligence. Although the draft law contained a number of safeguards against possible abuses of power by the intelligence services, the Commissioner was concerned that some measures, such as the use of surveillance tools to record non-public communications and the powers of the intelligence services to explore the network cable, raised issues of compatibility with the right to respect for private life. Referring to plans to extend the period in which telecommunications service providers are obliged to retain secondary personal data, the Commissioner stressed that suspicion less mass retention of communications data is contrary to the rule of law, incompatible with core data-protection principles and ineffective. Finally, the Commissioner stressed the importance of independent mechanisms ensuring democratic and effective oversight of the activities of intelligence services, which review the compatibility of these activities with human rights standards.

In a Human Rights Comment ("[Time to cure amnesia about the history of Roma in Europe](#)") published on 30 July 2015 and focusing on the crucial role of knowledge of Roma history to understanding their current situation, the Commissioner recalled that Roma and Yenish children were forcibly removed from their families in Switzerland, on grounds that their parents would not be able to educate them as good citizens. He noted as positive that the Swiss Government offered apologies to victims who were forcibly placed as children and had recently expressed its readiness to provide them with reparation.

In another Human Rights Comment ("[Non-implementation of the Court's judgments: our shared responsibility](#)") published on 23 August 2016 and focusing both on non-implementation of judgments of the European Court of Human Rights and on direct attacks on the Court's authority, the Commissioner expressed his concern at the popular initiative launched in 2015 and entitled "Swiss law instead of foreign judges" as it does not rule out the possibility of Switzerland leaving the Convention in the event of repeated, fundamental conflicts with Swiss Constitutional law.

Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance ([ECRI](#)) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI’s monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI’s country reports.

ECRI adopted its fifth report on Switzerland on 19 June 2014:

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Switzerland/CHE-CbC-V-2014-039-ENG.pdf>

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

ACFC 3rd Opinion adopted on 5 March 2013:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c6bd>

Resolution CM/ResCMN(2014)6 adopted by the Committee of Ministers on 28 May 2014:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c5d19

European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state’s periodical report and addresses an evaluation report to the Committee of Ministers, including proposals

Switzerland submitted its 6th periodical [report](#) on 15 December 2015. The Committee of Experts adopted their [evaluation report](#) on Switzerland on 16 June 2016 and the corresponding Committee of Ministers' [recommendations](#) were adopted on 14 December 2016.

The 7th periodical report is due on 1 April 2017.

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

CHE (<http://www.coe.int/en/web/anti-human-trafficking/switzerland>):

1st round GRETA report:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063cab6>

1st round recommendations:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063cab4>

Preventing and combating violence against women and domestic violence

The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible

for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

Switzerland signed the Istanbul Convention on the 11 of September of 2013. On 27 February 2017, the Chamber of Cantons approved the bill of ratification, which will now have to be approved by the national parliament. Switzerland is invited to pursue its efforts towards ratification to become a state party to the Istanbul Convention in the near future.

Fight against corruption (GRECO)

The 'Group of States against Corruption' (GRECO) monitors all its members through a "horizontal" evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

[GRECO adopted Switzerland's Fourth Round Evaluation Report](#) on 2 December 2016. The report is not yet publicly available at the time of writing.

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

At 31 December 2016, there were 7 (14 at 31.12.2015) cases against Switzerland pending before the Committee of Ministers for supervision of their execution. All cases in 2016 and 2015 were "leading cases", i.e. raising a new structural /general problem and requiring the adoption of general measures.

In 2016, the CM was seized by 4 new cases (also 4 in 2015) against Switzerland all of which were leading cases and the sums awarded in 2016 as just satisfaction amounted to € 61.000 (€ 29.415 at 31.12.2015).

In 2016, 11 cases (8 in 2015) were closed by the adoption of a Final Resolution, all of them being leading cases.

For a summary of main achievements in the recent years see the [Committee of Ministers' annual reports](#).

Main cases /groups of cases pending before the Committee of Ministers for supervision of execution under enhanced procedure

Currently, the only case against Switzerland under the enhanced supervision procedure pending before the Committee of Ministers is *Al-Dulimi and Montana Management Inc.* (No. 5809/08). It concerns the lack of appropriate judicial scrutiny of freezing and confiscation procedures initiated in Switzerland in 2006, pursuant to UN Security Council Resolutions 1483 (2003) and 1518 (2003), in relation to the assets belonging to the first applicant, who according to the UN Security Council was the head of finance for the Iraqi secret services under the regime of Saddam Hussein, and his company. The European Court found that the Swiss Federal Court merely confined itself to verifying that the applicants' names actually appeared on the lists drawn by the Sanctions Committee and that the assets concerned belonged to them, but that was insufficient to ensure that the applicants had not been listed arbitrarily (violation of Article 6 § 1).

Status of Execution:

On 22 November 2016 the authorities submitted an Action Report on the measures taken and envisaged for the execution of the European Court's judgment in this case (see [DH-DD\(2017\)32](#)).

As concerns individual measures, the authorities reported that the applicants lodged with the Federal Court three requests for the reopening of domestic proceedings. These requests are currently pending. The authorities committed to inform the Committee of Ministers of their outcome.

As concerns general measures, the authorities reported that the judgment was published and largely disseminated to all authorities concerned. In March 2016 the Swiss Federal Council instructed the federal administration to initiate reflections on the improvement of procedural safeguards in the context of the implementation of the sanctions adopted by the UN Security Council. Conclusions thereof should be submitted to the Federal Council in twelve months from the date of the Grand Chamber' judgment in the present case. In addition, the Swiss Government submitted that Switzerland is one of the twelve states which, on 12 November 2015, presented to the UN Security Council proposals on targeted sanctions which aim at enhancing the guarantees of due process and at making the de-listing procedure compatible with the requirements of the European Convention (see Annex to the Action Report for more details).

Other cases /groups of cases pending before the Committee of Ministers for supervision of execution

The other cases pending before the Committee of Ministers for supervision of execution are under the standard supervision procedure and refer to:

- violation of the right not to incriminate oneself on account of the fines imposed by the tax authorities on the ground of refusal to produce all requested items and violation of the right to equality of arms on account of the domestic courts' refusal to grant access to all documents in the file (*Chambaz*, 11663/04)
- discriminatory treatment of the applicant, prevented from military service on account of his handicap despite his willingness to perform the service, and his subsequent obligation to pay an exemption-tax (*Glor*, 13444/04)

- discrimination against women arising out of the method of calculation of invalidity benefits (*Di Trizio*, 7186/09)
- failure to speedily decide on the lawfulness of the detention imposed for psychiatric reasons (*Derungs*, 52089/09)
- violation of presumption of innocence on account of the terms used by the prosecutor in his decision to discontinue as time-barred the criminal investigation against the applicant (*Peltureau-Villeneuve*, 60101/09)
- lack of access to court on account of the absolute ten-year limitation period for asbestos-related claims irrespective of whether the claimant was aware of the effects of the damage (*Howald Moor*, 52067/10).

For information on the status of execution in these cases please see [HUDOC-Exec](#) database.

For additional information, including on the main reforms implemented in cases in which the supervision of execution by the Committee of Ministers have already been closed, please see the attached country factsheet (*N.B.*: it is not yet a final and public document, but the information in it is up-to-date).



SUI Country
FactSheet December

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Switzerland has not ratified the European Social Charter.

Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

For more information: <http://www.venice.coe.int/webforms/documents/?country=28&year=all>