

Additional Information

On the NGO Report on Switzerland's combined tenth to twelfth periodic reports to the UN-Committee on the Elimination of Racial Discrimination (CERD)

1. on Racial Profiling (Concluding Observation Par. 14): DNA profile act

The Swiss Parliament is currently negotiating a revision of the DNA profile act. The proposed amendments are intended to enable the police to analyse DNA from a crime scene for external characteristics (DNA phenotyping) as well as for the biogeographical origin. These extended DNA analyses would constitute a serious breach of fundamental rights and carry the risk of systematic discrimination and stigmatization of minority groups as well as ethnic/racial profiling. If the Swiss government does not refrain from introducing the extended DNA analyses, their application at least must be subsidiary, restricted on a small catalogue of offences and subject to a strict set of rules and monitoring mechanisms.

With the amendments of the DNA Profile Act, the law enforcement authorities in Switzerland will be allowed to carry out two further DNA analyses: the analysis of external characteristics – such as pigmentation of skin, eyes, and hair (DNA phenotyping) – and the determination of the probable continental, regional and ethnic origin (biogeographical origin).

In principle, these methods could also help to exonerate members of discriminated groups from suspicion in concrete cases. However, if, by means of an extended DNA analysis, a member of the majority society comes into question as a probable perpetrator, this will in many cases hardly bring any progress in the investigation. In the white majority society of Europe, the finding “skin color: white; origin: Europe” usually does not provide any further clue for an investigation. Only if the number of potential perpetrators is as small as possible, additional investigative techniques such as genetic screening can be carried out. If characteristics such as dark skin color or an origin outside of Europe appear likely, potentially all persons with these characteristics – sometimes entire ethnic or racialized population and communities – come under suspicion.

The OSCE Office of Democratic Institutions and Human Rights (ODIHR) has stated in an “Opinion on Draft Amendments to the DNA Profile Act of Switzerland” that the collection, processing and storage of DNA samples and profiles may interfere with the right to freedom of discrimination and other rights, such as the right to private life, the right to a fair trial and the presumption of innocence.¹ The ODIHR deems it essential to clarify the necessity of such additional profiling measures, in particular in terms of their nature and scope, as well as the proportionality of such measures and in which cases they will be applied. Moreover, the ODIHR notes that the retention of DNA samples and DNA profiles in relevant databases needs to be subjected to proper oversight mechanisms, involving independent bodies.

The UN Committee on the Elimination of Racial Discrimination CERD itself stated that DNA testing may lead to profiling and that there are no direct linkages between an individual's DNA and their ethnicity or nationality. The CERD has

¹ OSCE Office for Democratic Institutions and Human Rights ODIHR, Opinion on Draft Amendments to the DNA Profile Act of Switzerland, Opinion-Nr.: CRIM-CHE/418/2021 [AT], Warsaw, 3.08.2021.

also noted that discriminatory police practices against certain groups may be a result of DNA profiling.²

In conclusion, the extended DNA analyses, which the Swiss Parliament intends to introduce into the DNA profile act, carry the risk of stereotyping, discrimination, and genetic racial profiling. Therefore, they violate fundamental principles of the European Framework Convention for the Protection of National Minorities (Art. 1 to 3) and the International Convention on the Elimination of All Forms of Racial Discrimination (Art. 2 para.1).

Recommendations to Switzerland

- Recognize that the extended DNA analyses carry the risk of systematic discrimination and stigmatization of minority groups and ethnic racial profiling;
- Add to the draft legislation additional aims of the Act, such as quality assurance and control, accountability and transparency, while specifying the importance of following a human rights and rule of law compliant approach throughout;
- To specify that extended DNA analyses will only be used as an ultima ratio in criminal investigations and to limit the extended DNA analyses to certain serious offences;
- Support the extended DNA analysis with proper regulatory infrastructure, which would include strict procedures and multiple layers of decision-making, with clear oversight and accountability mechanisms, involving independent, multi-stakeholder oversight bodies that are not linked to or answerable to the police or prosecution authorities or forensic companies;
- Ensure an impact assessment that includes a proper human rights assessment of the draft amendments, and an inclusive and extensive consultation on the Draft Amendments, including with civil society, offering equal opportunities for women and people of minority groups to participate, at all stages of the law-making process.

² General Recommendation No. 36, Preventing and Combating Racial Profiling by Law Enforcement Officials, CERD/C/GC/36, 24 November 2020, par 36. See also General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18, pp. 98-108, 2005.

2. on Flight, asylum, migration (Concluding observations Par. 16 and 17): Compulsory COVID-19 test for deportation

The Swiss Parliament has decided, that rejected asylum seekers can be obligated to undergo Covid-19 tests before they are deported. Compulsory testing represents a violation of fundamental human rights and interferes with the patient's self-determination-right. No other population group in Switzerland is obligated to undergo compulsory Covid-19 tests. The Swiss government must refrain from this measure.

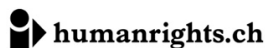
In September 2021, the Swiss Parliament decided that persons with a negative asylum decision may be required to undertake a COVID-19 test prior to their deportation, if host countries and air carriers require a negative test result to perform the deportation (Art. 72 AIG). If the person concerned does not submit to the test voluntarily, he or she may be tested against his or her will for the purpose of enforcing a deportation or an expulsion order. The compulsory testing does not apply to children and adolescents under the age of 15. The tests are administered by trained personal, who use the mildest type of test available.

Compulsory testing is both medically and legally irresponsible, as there is a risk of injury if a person resists, and the test is performed anyway. The compulsory performance of such a test represents a major violation of the fundamental right to bodily integrity as part of personal freedom (Art. 10 para. 2 BV). No other population group in Switzerland has so far been requested to undergo a compulsory COVID-19 test. The self-determination or autonomy of the patient is a fundamental principle of medical ethics. The compulsory performance of a COVID-19 test is to be regarded as an interference upon the patient's self-determination-right. In general, coercive measures against the will of a patient with the faculty of discernment are inadmissible. According to the Swiss Academy of Medical Sciences (SAMS), the new provision violates professional ethical pillars of medicine. The SAMS recommends medical professionals to refuse to perform the test in case of any uncertainty³.

Recommendations to Switzerland

- Persons with a negative asylum decision should not be forced to undergo a COVID-19 test. Compulsory COVID-19 tests should not be carried out.

This additional information is submitted to the Committee on the Elimination of Racial Discrimination (CERD) by humanrights.ch, the Swiss Observatory of Asylum and Foreign Nationals Law and the Alliance against Racial Profiling.



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³ SAMS Guidelines on Coercive Measures in Medicine, <https://www.samw.ch/de/Ethik/Themen-A-bis-Z/Zwangsmassnahmen-in-der-Medizin.html>; <https://saez.ch/article/doi/saez.2021.20043>.