



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

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COMMITTEE AGAINST TORTURE

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

Initial reports of States parties due in 1988

Addendum

\* SWITZERLAND

[14 April 1989]

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I. GENERAL INFORMATION

1. In Switzerland the protection of the individual against torture and other cruel, inhuman or degrading treatment or punishment is based on several constitutional rights.
2. Article 65, paragraph 2, of the Federal Constitution expressly prohibits corporal punishment. This article places an outright ban on punishments which directly affect a person's physical integrity. 1/
3. For many years the Federal Court - the Supreme Court of Switzerland - has recognized personal freedom as an unwritten constitutional right. This freedom appertains to any individual, Swiss or foreign, and is imprescriptible and inalienable.
4. According to the Federal Court, personal freedom protects the individual's physical and mental integrity (the right to move about, not to be arbitrarily arrested or detained, not to be submitted against his will to a medical act even such as a blood test; prohibition of obtaining confessions by coercion and of making experiments for research purposes on inmates of institutions. 2/
5. According to Swiss legal writers and judicial decisions, personal freedom, like any fundamental right, contains a core of elementary protection which must not be violated at any price. No public or private interest, no legal basis even if very precise, can legitimize any intrusion into this sacrosanct core. Otherwise personal freedom would be voided of its substance.
6. Thus the Federal Court declares inadmissible the use of methods and measures, such as torture, which have the effect of annihilating an individual's personality, which are such as to inflict serious mental disturbance, or which are in any other way contrary to human dignity, since such acts unquestionably affect the very core of personal freedom. 3/
7. Some cantonal constitutions expressly forbid the authorities conducting criminal proceedings to resort to unnecessary severity or to use means of constraint designed to obtain confessions (see for example article 74 of the Constitution of the Canton of Berne).
8. In Switzerland the Criminal Code (CP) is, through the punishments which it ordains, the main weapon in the campaign against torture and other cruel, inhuman or degrading treatment. The Military Criminal Code (CPM) is its equivalent in military matters. The relevant provisions will be examined in paragraphs 46-51 below, dealing with the implementation of article 4 of the Convention.
9. The codes of procedure protect the individual against any application of the law by the authorities which conflicts with the Convention. The Swiss Government will mention in this report the provisions of the Federal Criminal Procedure Act and of the Federal Military Criminal Procedure Act, together with a sample of the cantonal codes of criminal procedure.
10. In Switzerland the European Convention on Human Rights (CEDH) and, in particular, article 3 thereof play an important role in protecting the individual against torture and ill-treatment.



11. At the international regional level, Switzerland is a party to two conventions instituting effective procedures to ensure respect for the rights and obligations which they proclaim.
12. In 1974 Switzerland ratified the European Convention on Human Rights, article 3 of which prohibits torture and inhuman or degrading treatment or punishment. Any person who claims to be a victim of such acts may address to the bodies provided for in article 19 of the Convention 4/ an allegation that this provision has been violated. Switzerland has, in fact, recognized the right of individual petition (CEDH, art. 25). The European Commission and Court of Human Rights are competent to examine any petition submitted against Switzerland. These independent international bodies may consequently check, in accordance with a quasi-judicial adversary procedure which may lead to a decision by the Court, whether Switzerland has respected the prohibition against torture in a specific case.
13. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force for Switzerland on 1 February 1989. The Convention institutes non-judicial means of a preventive character based on visits. The European Committee for the Prevention of Torture is permitted by the Parties to visit any place where persons are deprived of their liberty by a public authority (art. 2) and to examine their treatment. The purpose of the Convention is to strengthen the protection of such persons from torture and from other forms of inhuman or degrading treatment (art. 1).
14. By ratifying the United Nations Convention against Torture in 1986, Switzerland extended to the world-wide level the commitment to respect the physical and mental integrity of the individual which it had already made at the international regional level.
15. At the domestic level, paragraphs 46-51 and 82 below, dealing with the implementation of articles 4 and 16 of the Convention respectively, will show that, so far as "other cruel, inhuman or degrading treatment or punishment" is concerned, Swiss law offers broader protection than the Convention.
16. In the Swiss monist view, international treaties form an integral part of the Swiss legal order as soon as they enter into force for Switzerland. There is no need to convert them into domestic law in order to be able to apply them.
17. It is permissible, in particular, for an individual to invoke the provisions of an international treaty before the authorities if, "considered in their context and in the light of both the subject-matter and the purpose of the treaty, they are unconditional and sufficiently precise to produce a direct effect, to be applied as they stood to a particular case, and to constitute the basis of a specific decision" (Third Report of the Federal Council to the Federal Chambers on Switzerland and the Conventions of the Council of Europe, FF 1984 I 792, p.799).
18. The Federal Council considers that most of the provisions of the Convention against Torture call for implementing measures, either legislative or administrative, at the domestic level 5/. Consequently the individual may not, in principle, avail himself of them before the authorities. Some provisions of the Convention, particularly article 3, might nevertheless be

regarded by the Federal Court as rules of law so designed that they could be directly applied by the State authorities and invoked before those authorities by any citizen.

19. Such has been the case with a provision similar to article 3 of the United Nations Convention - namely, article 3 of CEDH, which prohibits torture and inhuman or degrading treatment or punishment. The Federal Court considers that this provision is directly applicable in Switzerland, and with it, all the material guarantees provided by CEDH. The Federal Court holds that this Convention has, in the domestic legal order of which it forms an integral part, at least the rank of a federal Act (ATF 103 V 192; 101 IV 253) and that in addition, given the European public policy nature of the rights which it guarantees, it should be taken into consideration in determining Swiss public policy.

20. In Switzerland, a federal State, the powers of the State are shared between the federal and cantonal authorities. Criminal law, military criminal law, the right of asylum and mutual judicial assistance are federal matters; criminal procedure except in the case of a few offences, the administration of punishment, the organization of places of detention and the maintenance of law and order are matters for the 26 cantons or demi-cantons. Consequently in these latter spheres, even if the cantons act in accordance with federal law and constitutional rights, it does not follow automatically that the law will be uniformly applied.

21. The federal and cantonal legislators lay down the rules needed to give effect to the Convention.

22. The executive authorities are competent in matters of the police, detention, extradition and expulsion.

23. The courts, through their officers - examining magistrates, procurators and judges - take cognizance of violations and rule on appeals.

24. The Federal Court, which is the Supreme Court of Switzerland and to which lie a variety of remedies widely available to individuals (the court hands down more than 4,000 decisions a year), provides judicial supervision of the application of federal law.

25. A person who claims to be the victim of torture or other cruel, inhuman or degrading treatment has various means of enforcing his rights:

(a) If he alleges that the prohibition against torture has been violated during a criminal investigation, he will apply to the Procurator's Office or another cantonal supervisory authority, and the case will then be brought before a cantonal court. He may also lodge a criminal complaint, a possibility that will be examined in paragraphs 74 and 75 below concerning the implementation of article 13 of the United Nations Convention. If there has been a breach of the prohibition during detention, the administrative authorities of the canton are competent to hear the complaint. In both cases, after the cantonal remedies have been exhausted, the complainant may apply to the Federal Court, claiming violation of his constitutional rights (art. 84 of the Federal Act on Judicial Organization);



(b) If, in the course of extradition proceedings, the person sought claims that his physical and mental integrity is threatened in the requesting country, extradition will not be granted unless the requesting State gives a guarantee that that person will not be executed or that he will not be subjected to treatment violating his physical integrity (art. 37, para. 2, of the Federal Act on International Mutual Assistance in Criminal Matters [EIMP]). The person sought may appeal against a decision to extradite by submitting an administrative petition to the Federal Court (art. 25, EIMP);

(c) A person whose application for asylum has been rejected may file with the Federal Department (Ministry) of Justice and Police an administrative petition against the decision of the Commissioner for Refugees to send him back (art. 11, para. 2 and art. 21a, para. 3, of the Federal Asylum Act of 5 October 1979);

(d) An administrative petition also lies to the Federal Department of Justice and Police against a decision to expel in cases where an alien endangers the security of the State (administrative expulsion, art. 70 of the Federal Constitution);

(e) A decision to expel taken by a criminal court (criminal expulsion, art. 55 CP) in respect of an alien guilty of a fairly serious offence is subject to appeal before the higher courts (the cantonal courts of second instance, then the Federal Court). After the domestic remedies have been exhausted, it is still possible for an individual to file an individual petition against Switzerland with the European Commission of Human Rights, which in its turn will examine whether, in these various cases, the requirements of article 3 of the European Convention on Human Rights have been respected.

26. In Switzerland the most controversial questions with regard to the prohibition of torture and other cruel, inhuman or degrading treatment are those concerning policy on asylum and the holding of certain detainees incommunicado. The question of sending back abroad asylum-seekers whose applications have been rejected, and of the implementation in Switzerland of the principle of non-refoulement, will be examined in paragraphs 38-45 below, concerning article 3 of the United Nations Convention.

27. In Switzerland, holding someone incommunicado means adopting an exceptional measure limiting an untried prisoner's contacts with the outside world. Such a measure, which is almost unanimously criticized by Swiss writers on law, is known to the codes of criminal procedure of only a minority of cantons. Even so, the other cantons recognize the possibility of limiting the untried prisoner's rights at the initial stage of the proceedings, particularly the right to communicate freely with his counsel. Today, however, the trend is to soften this practice (see for example art. 150 of the new Code of Criminal Procedure of the Canton of Geneva).

28. Furthermore holding someone incommunicado is in Switzerland a very exceptional measure which is ordered only for a limited period and only in particularly serious cases, where the purposes of the preliminary investigation so require and cannot be achieved otherwise. The purpose of the measure must not be to place the accused in a situation in which he is induced to confess.



29. The bodies established by the European Convention on Human Rights have several times had occasion to rule on the compatibility of orders made in Switzerland for someone to be held incommunicado with article 3 of that Convention, which prohibits torture.

30. On each occasion the Strasbourg bodies have held that such a measure of isolation was admissible in certain circumstances and did not constitute per se inhuman treatment. According to these bodies, it would be inhuman to hold someone incommunicado in a way which had the effect of destroying his personality, such as holding him in complete sensory or social isolation, or which was designed to punish him or to obtain a confession by breaking down his resistance. This had not been done in the Swiss cases.

31. Mention should be made of two Swiss cases which have been the subject of petitions to the Strasbourg bodies. 6/

32. In the Bonzi case, in which a petition was declared inadmissible by the Commission, the seriousness of the offence (robbery and unlawful possession of explosives and weapons) and the particularly high risk of collusion had justified the prohibition of visits and the suppression of direct communication between the untried prisoner and his counsel for a period of one month. The Kröcher/Möller petition was rejected both by the Commission and by the Committee of Ministers of the Council of Europe. The detainees, two terrorists charged with attempted assassination, had been held for a time in strict isolation, under continuous watch and, at the beginning of their detention, in constant artificial light. Despite the severity of this special régime, the CEDH bodies held that account had to be taken of the particular context of the case (the detainees' past record, the development of terrorism in the 1970s and the suicide of several terrorists in prison) and therefore did not find any violation of human rights by the Swiss authorities.

## II. INFORMATION CONCERNING ARTICLES 2-16 OF THE CONVENTION

### Article 2

33. In the 1970s Switzerland amended its legislation with a view to acceding to CEDH. Since then, several petitions claiming violations of CEDH article 3 by Switzerland have been brought before the Strasbourg bodies. They were all rejected. 7/

34. According to the decisions of the Federal Court, the prohibition against torture and other inhuman treatment constitutes a general principle of international law which must be respected by every authority (jus cogens) (ATF 108 Ib 408, 412). According to the Federal Council, this prohibition cannot be waived under any circumstances, since torture and inhuman treatment constitute one of the most serious violations of human rights. 8/

35. The Military Criminal Code makes specific provision for the punishment of offences committed against international law in the event of armed conflict (arts. 108, 109, 112, 114 CPM).

36. In Swiss law, an act which is ordered by the law or which is a matter of official or professional duty does not constitute an offence, nor does an act which the law declares to be permissible or non-punishable (art. 32 CP). On the other hand, an order does not constitute grounds for treating an unlawful act as lawful.



37. In military criminal law, when the execution of an order constitutes a crime or lesser offence, the person who gave the order is punishable as the perpetrator; the subordinate is also punishable if he realized that in giving effect to the order he was participating in the commission of a crime or lesser offence (art. 18 CPM).

### Article 3

38. In 1966 Switzerland ratified the European Convention on Extradition. On that occasion the Federal Council pointed out that extradition to a country which ordered corporal punishment was not compatible with Swiss public policy (see art. 65 of the Constitution (Cst.)).

39. This principle was embodied in the Federal Act on International Mutual Assistance in Criminal Matters, which has been in force since 1983 and which provides in article 37, paragraph 2, that: "[extradition] shall not be granted unless the requesting State gives a guarantee that the person sought will not be executed or that he will not be subjected to treatment violating his physical integrity".

40. The Federal Court regards article 3 of CEDH and article 3, paragraph 2, of the Convention on Extradition as binding rules of public international law which must always be taken into account in extradition proceedings. These articles are, in fact, the expression of a mandatory principle of human rights. Thus, where there are substantial grounds for recognizing that the physical or mental integrity of the person to be extradited is threatened in the requesting State, the Federal Court refuses to order extradition, whether that State is or is not tied to Switzerland by the Convention on Extradition or a bilateral treaty and whether it is or is not a party to CEDH (ATF 108 Ib 408: refusal to extradite despite the existence of an extradition agreement between Switzerland and Argentina; ATF 109 Ib 64). 9/

41. In case of doubt, extradition will be allowed if the Swiss authorities obtain what are considered satisfactory assurances that the requesting State will respect the rights of the person to be extradited (ATF 107 Ib 68).

42. The petitions against Switzerland invoking article 3 of CEDH and addressed to the European Commission of Human Rights have all, without exception, been rejected as unfounded. 10/

43. According to the Federal Council, "the credibility of the asylum policy depends on the execution of reasonably exigible decisions to send back asylum-seekers. Asylum-seekers who are not recognized as refugees are in principle sent away from Switzerland, and if necessary turned back by force. However, exceptions are made when the principle of non-refoulement or a particularly distressing human consideration justifies them". 11/

44. The principle of non-refoulement, which is an integral part of international customary law, is expressed in article 33 of the 1951 Convention relating to the Status of Refugees, and article 45 of the Federal Asylum Act, and is inferred by the European Commission of Human Rights from article 3 of CEDH.

45. On two occasions the Swiss Government has had to defend its point of view before the Strasbourg Commission. Both petitions were rejected. 12/

Article 4

46. The Swiss legislator has not made torture, as defined in article 1 of the United Nations Convention, a specific offence. Swiss criminal law, however, meets the obligations imposed by article 4 of the Convention.

47. Acts constituting torture and cruel, inhuman or degrading treatment are covered by the special provisions of the Criminal Code, which also applies to public officials and other persons acting in an official capacity (art. 13 of the Federal Act on the Responsibility of the Confederation).

48. Such acts are punished on the basis of articles 111 et seq. CP (homicide), 122 et seq. CP (bodily injury), 127 et seq. CP (endangering the life or health of another), 180 et seq. CP (crimes or lesser offences against freedom such as threats and coercion), 187 et seq. CP (attacks on sexual freedom and honour) and 312 CP (abuse of authority). Attempts to commit the above-mentioned acts (art. 21 et seq. CP), instigation (art. 24 CP) and complicity (art. 25 CP) also constitute offences.

49. The penalties that can be imposed by the courts are listed in Chapter I of the Criminal Code. Neither the death penalty nor corporal punishment is known to Swiss criminal law.

50. The Military Criminal Code, like the Criminal Code from which it borrows part of the list of offences, does not use the term "torture" or "cruel, inhuman or degrading treatment or punishment". Nevertheless it severely punishes attacks on life and physical integrity (art. 115 et seq. CPM), crimes and lesser offences against freedom (art. 149 et seq. CPM) and against morality (art. 153 et seq. CPM), and abuses of power (abuse of the power to punish: art. 67 CPM; suppression of a complaint: art. 68 CPM; endangering a subordinate: art. 70 CPM; threats or assault and battery: art. 71 CPM).

51. Under the Military Criminal Code, the death penalty may be imposed only in time of war or imminent danger of war (arts. 5 and 27 CPM). The condemned person is shot. The death penalty in peacetime was abolished in Switzerland as early as 1942. Switzerland has ratified Protocol No. 6 to CEDH, which provides that in peacetime no one may be sentenced to death or executed. This instrument entered into force for Switzerland on 1 November 1988.

Article 5

52. The Swiss courts have jurisdiction in all the cases provided for in article 5 of the Convention (the principle of territoriality: art. 3 CP; of passive personality: art. 5 CP; of active personality: art. 6 CP; of world-wide jurisdiction: art. 6 bis CP).

Article 6

53. If there is a serious presumption of a person's guilt and, in addition, a danger that that person may flee, obstruct justice or repeat the offence, the examining magistrate or some other competent authority may order remand in custody, the deposit of bail or some other measure of judicial control and surveillance.



54. Switzerland is a party to the 1963 Vienna Convention on Consular Relations, article 36 of which deals with a detainee's freedom to communicate with consular officers of the State of which he is a national, and with the obligation to inform the authorities of the country of residence.

Article 7

55. The principle of aut dedere aut judicare is known to Swiss legislation (see arts. 5 and 6 bis CP). Furthermore Switzerland has confirmed it by ratifying various international conventions. 13/

56. In Switzerland criminal cases are shared out among the cantonal courts according to the magnitude of the acts to be tried and the severity of the applicable penalty. Acts constituting torture, which are serious acts, will therefore be referred to the court competent to deal with offences carrying the severest penalties.

57. Procedure is governed by the cantonal laws of criminal procedure. These apply to all categories of persons regardless of nationality, political adherence or social rank.

58. Many provisions of federal and cantonal Law guarantee fair treatment for any person prosecuted (conformity of the operations of the judicial police with criminal procedure: art. 103 of the Federal Criminal Procedure Act (PPF); prescribed duration of remand in custody; right to defence counsel: art. 35, first paragraph, PPF; right to communicate with defence counsel save in exceptional cases: art. 117 PPF; right to an interpreter: art. 98 PPF; public nature of the proceedings: art. 24 PPF).

59. An accused person who considers himself an injured party may address a petition against Switzerland to the European bodies on the basis of CEDH articles 5 and 6.

Articles 8 and 9

60. On 20 December 1966 Switzerland ratified the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters. It is also bound by many bilateral agreements dealing with these subjects.

61. In the absence of an agreement, a request for co-operation in criminal matters is in principle admissible only if the requesting State ensures reciprocity (art. 8 of the Federal Act on International Mutual Assistance in Criminal Matters [EIMP]).

62. Switzerland makes extradition conditional upon the act complained of being punishable, in Switzerland and in the requesting State, by deprivation of liberty. In principle, the heaviest penalty applicable for such an act must be, in both States, deprivation of liberty for at least one year (art. 35 EIMP). That is the case in Switzerland for offences against life (homicide, art. 111 CP: imprisonment for at least five years) or against physical integrity (serious bodily injuries, art. 122 CP: rigorous imprisonment for not more than 10 years or imprisonment for not less than six months and not more than five years).

63. Article 63 of the Act on International Mutual Assistance in Criminal Matters expounds the concept of mutual assistance in fairly broad terms. According to this article, mutual assistance comprises "the communication of information and of procedural records and other official records recognized in Swiss law when they appear to be necessary for the proceedings ...". "Acts of mutual assistance comprise in particular: the notification of documents, searches for evidence, the delivery of files and documents, the search of persons and premises, the seizure of goods, and the confrontation and transit of persons."

#### Article 10

64. The teaching of human rights, including the prohibition of torture, forms part of the training of prison staff, police and army personnel.

65. Ten years ago the Swiss Centre for the Training of Prison Staff was set up at Berne. There persons working in penitentiaries receive basic and ongoing training in which the teaching of constitutional law, fundamental freedoms and CEDH have a prominent place.

66. Teachers at the Centre have always stressed the importance of the observance of human rights in practice, and in particular in drawing up the internal regulations of a prison or taking disciplinary measures against a detainee. They now find that their courses have had very positive effects on the practice followed in places of detention.

67. As to police training, most cantonal police forces send their cadets and officers to the courses held by the Swiss Police Institute at Neuchâtel. This Institute takes care to abide by international principles in human rights matters and has already included CEDH as a subject in further training courses.

68. Lastly, military personnel have an opportunity to familiarize themselves with the principle of the prohibition of torture during practical courses and exercises. Swiss soldiers receive an instruction manual on the Geneva Conventions and must prove their knowledge of the subject in tests. In addition, instructors take courses in public international law at the military school.

69. At the European level, Switzerland participated in the elaboration of the European Penitentiary Rules (Recommendation (87) 3, adopted by the Committee of Ministers of the Council of Europe on 12 February 1987), which are the counterpart of the United Nations Standard Minimum Rules for the Treatment of Prisoners. This Recommendation has just been translated into German and distributed in the cantons. 14/

70. The Council of Europe has also issued two publications, one for the use of "persons responsible for police training policy, police instructors and officers", the other for prison governors. 15/ These publications serve as guides to these officials in education and information regarding the prohibition against torture.



#### Article 11

71. At both the cantonal and the federal level, a wide range of means of review make it possible to prevent cases of torture:

(a) Checks on the preliminary investigation, firstly in the form of review by higher authorities (the power of review granted to a court of second instance or another authority), and secondly through notification to the parties of the remedies available (appeals to the cantonal administrative or judicial authorities);

(b) Surveillance of the enforcement agencies through the mandatory approval of their internal regulations by the executive power; the institution of a number of supervisory authorities (examining magistrate, procurator, special commission, police board, etc.); the obligation to enter the disciplinary measures taken against detainees in a supervised register; the institution of remedies, etc.;

(c) Lastly, ultimate judicial supervision by the Federal Court. An appeal alleging a breach of constitutional rights (an appeal under public law) lies against any cantonal act (law, decision or judgement); an appeal under administrative law lies against any decision of the cantonal or federal administrative authorities which violates federal law (including international treaties forming part of the Swiss legal order). 16/

#### Article 12

72. In Swiss law all serious offences, including acts of torture or ill-treatment, are automatically prosecuted. Officers of the judicial police are in duty bound to seek them out and report them. An investigation is then started.

73. The permission of an executive or judicial authority is sometimes, and at the federal level always, needed for the prosecution of a public official for an offence connected with his work or official position (see, at the federal level, art. 15 of the Federal Act on the Responsibility of the Confederation). Such permission may be refused only in minor cases, where a disciplinary penalty seems sufficient. The injured party may appeal against such refusal.

#### Article 13

74. In Switzerland everyone is entitled to report offences that are automatically prosecuted. Indeed, in certain cantons (see for example art. 10 of the Code of Criminal Procedure of the Canton of Geneva) there is a mandatory obligation to report serious offences. The information is laid in writing or orally with a police officer, an examining magistrate, the procurator's office or, in military matters, the commanding officer or the competent persons in the Federal Military Department. A record is made of the information.

75. Swiss law does not lay down any specific rules concerning the protection of the complainant and witnesses. In cases of ill-treatment or intimidation, the rules of the Criminal Code, in particular those relating to bodily injuries and threats, are applied.

#### Article 14

76. There are many cantonal and federal provisions enabling anyone who has suffered injury as a result of a criminal offence to obtain compensation for it.

77. In civil matters, the activities of an officer of the State may involve his personal liability or that of the State. The victim of an act of torture or of some other cruel, inhuman or degrading act, or his beneficiaries, may apply to the officer concerned or to the State for compensation for the damage caused. For reasons of solvency, Swiss law allows the victim, in principle, to bring his action directly against the State. Indeed, it sometimes requires him to do so (see for example art. 3 of the Federal Act on the Responsibility of the Confederation).

78. In military matters, where the damage results from an offence punishable by the Military Criminal Code, articles 163 and 164 of the Federal Military Criminal Procedure Act allow the injured party to apply to the military courts for compensation.

#### Article 15

79. The cantonal codes of criminal procedure confirm the principle of the free appraisal of evidence by the court. The judge has complete freedom to decide, according to his own intimate conviction, on the validity of the evidence submitted to him. There is no limitation on the forms which evidence can take.

80. These principles explain why, in Switzerland, any evidence obtained illegally is not declared inadmissible ab initio. 17/

81. On the other hand, a State based on law can under no circumstances tolerate certain methods of obtaining evidence. In order to safeguard the higher interests of the individual, any method of obtaining evidence such as a truth serum, constraint or torture must be renounced in principle. The Federal Court holds that such methods are prohibited outright by Swiss public policy. 18/

#### Article 16

82. Since Swiss criminal law does not contain any specific provisions punishing torture, and since torture can be defined as the most serious form of cruel, inhuman or degrading treatment or punishment, this report also applies mutatis mutandis to the prevention and punishment of such acts.

### III. FINAL CONSIDERATIONS

83. For many years Switzerland has striven to pursue a coherent global policy in the field of human rights, and particularly in the suppression of torture.

84. Among the efforts made, it is fair to mention a number of steps, direct or indirect, which Switzerland has taken towards the suppression of torture at the international level. Switzerland is working actively, at the bilateral and multilateral levels, for better protection for persons deprived of their



liberty against torture and cruel, inhuman or degrading treatment or punishment, both through the prevention and punishment of such acts and through due compensation of their victims.

85. Switzerland, through its contribution to the United Nations Voluntary Fund for Victims of Torture, the substantial share it bears in the cost of the visits which ICRC makes to prisoners, and its financial support for various non-governmental organizations such as the International Commission of Jurists, the Swiss Committee against Torture, and the International Association against Torture, is participating financially in programmes of protection against torture and assistance to its victims.

86. Furthermore Switzerland intervenes at the bilateral level, through the diplomatic channel, on a case-by-case basis on behalf of persons of Swiss or foreign nationality whose physical or mental integrity has been seriously violated. For this purpose the Federal Department of Foreign Affairs, through its network of diplomatic missions, maintains in Switzerland and abroad, sustained relations with organizations working for the defence of human rights, which are valuable sources of information.

87. The Federal Council, aware of the close link between respect for human dignity and the maintenance of world peace and security, intends in future to intensify even further its efforts to defend human rights, particularly through its foreign policy. 19/

88. On the basis of what has been stated in this report, the Swiss Government considers that it has fulfilled the international commitments which it assumed by ratifying the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### Notes

1/ See Federal Court decision (ATF) 99 Ia 280.

2/ See ATF 90 I 40; 90 I 104; 102 Ia 279; 104 Ia 480; 106 Ia 277.

See also, for a summary of the situation in Switzerland, the message from the Federal Council to the Federal Chambers dated 28 February 1983 concerning the popular initiative "For the right to life" (Feuille fédérale (FF) 1983 II 1, pp. 27, 28).

In this context, mention should be made of the directives on medical ethics concerning experimental research on man which were drawn up by the Swiss Academy of Medical Sciences (ASSM) on 1 December 1970 and revised on 17 November 1981. In Switzerland they are regarded as "soft law". ASSM directives and recommendations do not have normative force, but the Federal Court has been guided by them on several occasions, recognizing that they reflect the present level of science and meet the conditions laid down by constitutional principles.

3/ See ATF 98 Ia 508; ATF 106 Ia 280.

4/ Articles 24, 44 and 46 of the Convention also provide that any High Contracting Party may refer to the Commission and the Court a breach of any of the rights (for example art. 3) guaranteed by the Convention.

5/ Message from the Federal Council to the Federal Chambers concerning the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, dated 30 October 1985, FF 1985 III 273 et seq.

6/ Decision of the European Commission of Human Rights dated 12 July 1978 in the Bonzi Case, DR 12, p. 185 et seq., Report of the European Commission of Human Rights of 16 December 1982 and Resolution No. (83)15 of the Committee of Ministers of the Council of Europe in the Kröcher/Möller Case, DR 34 p. 24 et seq.

7/ See, in addition to the cases already mentioned in this report, the decision of 5 December 1979 in the Bonnechaux case, petition No. 8224/78.

8/ Message from the Federal Council dated 30 October 1985 concerning the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, FF 1985 III, p. 273.

9/ These decisions take account of the recommendations on extradition made to Member States by the Committee of Ministers of the Council of Europe: Recommendation R (80) 7 on the practical application of the European Convention on Extradition and Recommendation R (80) 9 on extradition to States not parties to CEDH.

10/ Decision of 6 October 1976 in the Lynas case, DR 6, p. 141; decision of 9 December 1980 in the X v. Switzerland case, DR 24, p. 205.

11/ Message from the Federal Council of 2 December 1985 on the revision of the Asylum Act, FF 1986 I 1, p. 7, 19; on the principle of non-refoulement: ATF 111 Ib 68.

12/ Decision of 14 April 1986 in the A v. Switzerland case, petition No. 11933/86, published in Jurisprudence des autorités administratives de la Confédération (JAAC) 1986 IV Nos. 89 and 127A; decision of 9 May 1986 in the Y and associates v. Switzerland case, petition No. 12102/86, published in JAAC 1986 IV, Nos. 90 and 127B.

13/ For example: the 1970 Hague and the 1971 Montreal Conventions for the Suppression of Unlawful Seizure of Aircraft; the 1973 United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; the 1979 International Convention against the Taking of Hostages.

14/ In a consistent series of decisions, the Federal Court has found that it is appropriate to take the principles set forth in the recommendations of the Council of Europe on the treatment of prisoners as a guide in interpreting and giving effect to the principle of personal freedom, and that no departure should be made therefrom without important reasons (see, for example, ATF 111 Ia 341, p. 345).



15/ J. Alderson, Les droits de l'homme et de la police, Strasbourg, 1984, 322 pp.; A. Reynaud, Les droits de l'homme dans les prisons, Strasbourg, 1986, 224 pp.

16/ For further details, see paras. 16-19 above.

17/ ATF 109 Ia 244, 247; see decision of CEDH in the Schenk case, in which the Court confirmed the validity of the approach made by the Swiss judicial authorities. Schenk decision of 12 July 1988, Series A 140.

18/ ATF 109 Ia 273, 298, preambular para. 7 (2).

19/ Report of the Federal Council dated 2 June 1982 on Swiss policy in favour of human rights, FF 1982 II 753.

ANNEX

List of documents submitted with the present report \*/

Legislative texts

1. Federal Constitution: art. 65, para. 2, and art. 70
2. Swiss Criminal Code (CP): arts. 3, 5, 6, 6 bis, 21 et seq., 24, 25, 32, 55, 111 et seq., 122 et seq., 127 et seq., 180 et seq., 187 et seq., 312
3. Military Criminal Code (CPM). arts. 5, 18, 27, 68, 69, 70, 71, 108, 109, 112, 114, 115 et seq., 149 et seq., 153 et seq.
4. Federal Criminal Procedure Act (PPF): art. 24, art. 35, para. 1, arts. 98, 103, 117
5. Federal Military Criminal Procedure Act: arts. 163 and 164
6. Federal Act on International Mutual Assistance in Criminal Matters (EIMP): arts. 8, 25, 35, art. 37, para. 2, art. 63
7. Federal Asylum Act: art. 11, para. 2, art 21a, para. 3, art. 45
8. Federal Act on Judicial Organization: art. 84
9. Federal Act on the Responsibility of the Confederation: arts. 3, 13, 15

Messages and reports of the Federal Council

10. Message concerning the popular initiative "For the right to life" (Feuille fédérale (FF) 1983 II 1, pp. 27, 28)
11. Message concerning the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (FF 1985 III 273, p. 280)
12. Message on the revision of the Asylum Act, of the Federal Act on the Residence and Establishment of Foreigners, and of the Federal Act Instituting Measures to Improve the Federal Finances (FF 1986 I 1, p. 7, 19)
13. Report on Swiss policy in favour of human rights (FF 1982 II 753)

Decisions of the Federal Court

14. Federal Court decision (ATF) 99 Ia 262, p. 280
15. ATF 104 Ia 480

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\*/ The documents in this list are available for consultation, in the form in which they were received from the Government of Switzerland, in French, German or Italian, in the files of the United Nations Centre for Human Rights.



16. ATF 106 Ia 277
17. ATF 98 Ia 508
18. ATF 111 Ib 68
19. ATF 111 Ia 341
20. ATF 109 Ia 244
21. ATF 109 Ia 273

Decisions of the European Commission and Court of Human Rights

22. Decision of the Commission dated 12 July 1978 on the admissibility of the Bonzi v. Switzerland petition, DR 12, p. 185
23. Report prepared by the Commission on 16 December 1982 in the Kröcher and Möller v. Switzerland case, DR 34, p. 24
24. Report prepared by the Commission on 5 December 1979 in the Bonnechaux case
25. Decision of the Commission dated 6 October 1976 on the admissibility of the Lynas v. Switzerland petition, DR 6, p. 141
26. Decision of the Commission dated 9 December 1980 on the admissibility of the X v. Switzerland petition, DR 24, p. 205
27. Decision of the Commission dated 14 April 1986 on the admissibility of the A v. Switzerland petition (published in Jurisprudence des Autorités Administratives de la Confédération (JAAC) 1986 IV Nos. 89 and 127 A)
28. Decision of the Commission dated 28 April 1986 in the Y v. Switzerland case (published in JAAC 1986 IV Nos. 90 and 127B).
29. Decision of the Court dated 12 July 1988 in the Schenk v. Switzerland case, Series A No. 140

Recommendations of the Committee of Ministers

30. Recommendation No. R (80) 7 of the Committee of Ministers to Member States concerning the practical application of the European Convention on Extradition
31. Recommendation No. R (80) 9 of the Committee of Ministers to Member States concerning extradition to States not parties to the European Convention on Human Rights

Publications of the Council of Europe

32. Brochure of the Council of Europe on Les droits de l'homme et la police, 1984
33. Brochure of the Council of Europe on Les droits de l'homme dans les prisons, 1986

Other

34. Directives of the Swiss Academy of Medical Sciences (ASSM) dated 1981 concerning experimental research on man.

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