



INFORMATION NOTE

2nd to 4th periodic report of SWITZERLAND

68th session of the United Nations Committee on the Rights of the Child

Summary of Juvenile Justice related issues

Ratification of the Convention on the Rights of the Child by SWITZERLAND: 24TH February 1997

Previous report presented in: on 29 May 2002 (30th Session of the Committee)

1.1 JUVENILE JUSTICE - KEY ISSUES

I) Legislation:

In Switzerland the competencies regarding children and adolescents falls to the Cantons. Each one has different policies in this respect. The Federal Government may only act on a subsidiary basis. The Committee was really concern about the harmonization of the different cantonal policies and strategies regarding the rights of the child.

On 20 June 2003, Parliament adopted a new Federal Act on the Criminal Law applicable to Juveniles (Juvenile Criminal Law Act), which entered into force on 1st January 2007. The new act contains various provisions that fulfil the recommendations set out in the Committee's concluding observations. This act permitted that the Juvenile Criminal Law were no longer integrated in the Criminal Code, applicable to adults, now it is the subject of a separate Act with more expanded and more flexible penalties.

On this topic, it was also launched a National Prevention Programme on young people and Violence, decree of the Federal Council of 11 June 2010.

The Juvenile Criminal Procedure Code entered into force on 1 January 2011, at the same time as the Swiss Criminal Procedure Code. Juvenile criminal law in Switzerland focuses on the perpetrator rather than on the act; its primary purpose is not punishment but reform and education.

Also the National Council Control Committee studied in its report "Child Protection and coercive measures under the law on foreign nationals" the situations of minors' detained pending return and made five recommendations to the Federal Council.

The introduction of the European Union return directive 2008/115/EC represents a development of the Schengen acquis, necessitated an amendment to the Foreign Nationals Act and the Asylum Act, which entered into force on 1 January 2011.

The Advancement of Children and Young People Act which came into force the 1st of January of 2013, alongside with the Conference of Cantonal Ministers (CDAS) work nowadays in joint effort for the observance and implementation on the rights of the child. At the National level, the Federal Commission for Child and Youth Affairs monitors the situation of children and young people in Switzerland.



The CDAS works closely with its technical conferences- the Conference of Cantonal Managers for Child Protection and Youth Support (CPEAJ) and the Conference of Cantonal Delegates for the advancement of Children and Young People – in which all the 26 cantons are represented. It has been launched a planning process for support for young people in an institutional environment within a national planning platform that should have been available since the end of 2014 (data collection).

The evaluation of the Law on Promotion of Children and Young People would be conducted in 2017.

II) Minimum age of criminal responsibility:

One of the main innovations introduced by the new Federal Act was the increasing of the minimum age of criminal responsibility from 7 to 10 years. Switzerland does not intend to rise that minimum age of 10 years because the primary aim of the Swiss criminal law is not to retaliate but to protect and educate children and adolescents. However, up to the age of 15, the Juvenile Criminal Law Act only provides for protective measures or light sentences (reprimand or period up to 10 days of community service), detention penalties cannot be handed down to minors who are less than 10 years.

III) Number of children and length of detention:

The new juvenile criminal law stipulates a custodial sentence of up to one year for minors who were aged 15 at the time of the offence and up to four years for those who were 16 at the time of the offence, where the offence was very serious.

The average duration of detention of minors is higher than for adults because returning minors is administratively more complex than adults. During the period January 2008 to December 2011, the average duration of detention was 29 days for adults and 43 days for minors.

However, of the 367 minors detained, 204 were in detention for no more than four days. On the other hand, 26 persons were detained for more than six months.

With the amendments to the Foreign Nationals Act and the Asylum Act, the maximum duration of administrative detention has been reduced in the case of the minors aged 15 to 18 , to 12 months.

Civil society: Thus, they cannot give an exact average on such detention length for juveniles in Switzerland, but the approximate average is between 20 and 55 days. This bracket is certainly indefinite but it is encouraging to note that juvenile detention in Switzerland is relatively short. No more updated data.

a) Access to data:

No

Yes : A total of 685,500 persons aged between 10 and 17 were living in Switzerland in 2009. In that year, sentences were handed down to 15,100 minors. The number of criminal convictions of minors rose from 15,064 in 2009 to 15,646 in 2010 (an increase of 3.8 per cent). Of those convicted 77.3 per cent were young people aged over 15 and 77.7 per cent were boys (22.3 per cent girls). After a slight drop in the number of convictions of juveniles for violent crime, from 2,456 in 2008 to 2,367 in 2009, the number increased again in 2010, to 2,619. The breakdown of the types of penalties imposed remained approximately the same: most were reprimands and community service.

NO more updated data.

IV) Trial conditions:

The separation of examining authorities and sentencing in juvenile criminal procedure (also included in the article 40 CRC) is alien to the Swiss legal tradition; neither does the Juvenile



Criminal Procedure Code recognise it.

In the Canton of Solothurn, the Police Department issued a new directive on the treatment of minors after a number of parents lodged a complaint because they had not been informed when their children were held in a police station at night for verification or identification. The new directive states EXPRESSLY that police custody should be ordered only as LAST RESORT and that is a rule young people should not be handcuffed. It also stipulates that if a minor has to be taken to a police station, his or her legal guardian must be informed immediately. Under the Juvenile Criminal Procedure Code, a juvenile defendant or guardian have the right to appoint a lawyer at any time but there is, however, no guarantee that such aid will be free of charge (regarding that provision, the Federal Council does not intend to amend it).

The articles 10,12,13,14 and 15 of the Federal Act include the possibility for a minor who committed a punishable act, whether or not the child has acted culpably, there are protection measures (personal assistance or outpatient treatment or be placed in an institution) depending on the child's needs, giving them the possibilities, depending on the act committed, the trial court imposes the penalty of: reprimand or order community service, a fine or a custodial measure.

The custodial measure only if the acts committed constitute a crime or misdemeanour and if the perpetrator had reached the age of 15 at the time of the acts.

The new Juvenile Criminal Procedure Code entitles a minor or his or her legal guardian to use the services of a defence counsel at any time during investigation and trial proceedings.

V) Detention conditions

In the Civil Code there is no such provision that prohibits corporal punishment, detention and collective punishment in the educational arena at the federal level. The line between corporal punishment and security measures such as detention is not clearly defined. Unlike the recommendations of the Committee, no measures have been taken in criminal law to explicitly prohibit corporal punishment of children by October 2014.

The administrative detention of minors may be ordered in cases when the Foreign Nationals Act comes to the talk, unlike the European Union return directive, but only if those minors are *over the age of 15*. In practice, the aim of detention must therefore be the feasible and lawful removal of the person in question. If it is established that removal is unfeasible or unlawful, detention cannot achieve its aim and may not, therefore, be ordered.

Article 81, paragraph 3, of the Foreign Nationals Act now provides that the form of detention must take account of the needs of minors.

a) In general (access to health, education, etc.):

Switzerland has a reservation also with regard to the unconditional right to assistance enshrined in the art.40 of the CRC. The Federal Council stated that "Switzerland continued to interpret art 40, paragraph 2(b) (ii) of the Convention as an obligation to designate an official defence counsel not in all the cases but only where a defence is necessary"

On the right to education, most of the staff employed in prisons and detentions centres are responsible for educational activities, with training in special education and social work.

Minors in administrative detention must have the possibility to engage in leisure activities.

b) Pre-trial detention:

Before the introduction of the new juvenile criminal law, the Federal Supreme Court had already ruled that young people could be detained in prison or remand prison only on a temporary basis, as a short-term solution in an emergency situation. It had ruled that it was



unlawful to detain an adolescent in a remand prison for weeks or months in the absence of options for placement in an appropriate institution, even if the person concerned had given his or her consent.

The cantons are responsible for the enforcement of detention at the preparatory stage, detention pending removal or expulsion

c) Separation from adults:

Although the new Federal Act on the Juvenile Criminal Procedure Code provides that minors must be separated from adults during pre-trial detention and also in prisons, Switzerland has a reservation concerning the article 37 of the CRC on the separation of minors and adults in detention; a reservation that the State affirms that cannot be withdrawn for the moment because there is a transitional period of 10 years (which was established by the art. 48 of the Reformed Juvenile Criminal Law Act in 2007) for the creation of necessary and suitable institutions in order to deal more appropriately with the juvenile's deprivation of liberty, a period of time that has not yet elapsed.

Some of the cantons have these institutions already put in place, but under the article 48 of the Juvenile Criminal Law Act, the cantons have until the end of 2017 to establish the necessary institutions for the placement of minors and for the detention in minors and by that time, the separation of young people deprived of liberty from adults will be complete.

VI) Preventive measures:

The Federal Council in May 2009 also issued a detailed report on the prevention of juvenile violence in the family, at school, in social contexts and in the media. The report analyses the causes and scope of violent behaviour in young people, gives an overview of current prevention measures in Switzerland and presents the main areas of focus for the effective prevention of violence. Following the release of the report, the Federal Council in June 2010 launched two nationwide five-year programmes: the first is aimed at more effective prevention of violence and the second at helping young people to acquire the skills necessary to make the most of the opportunities available to them and avoid the risks associated with electronic media.

Many prevention measures are already in place at the cantonal level, for example the Working Group in Lucerne; each canton has generally adopted different preventive measures to combat juvenile crime and also to combat violence against young people.

The National Prevention Program "Youth and Violence" is running at the federal level, which would be used by cantons as a basis to draft their own strategies.

VII) Alternative measures:

The authorities may refrain from instituting criminal proceedings or suspend them if an agreement is reached between the injured party and the juvenile perpetrator through mediation. The competent authority may also refrain from instituting criminal proceedings or imposing a penalty if certain other conditions are met (art. 5 Juvenile Criminal Procedure Code and art.2 Juvenile Criminal Law Act)

Civil society: According to General Comment No. 10, by virtue of article 40(3) of the Convention, States must make efforts to promote the adoption of measures designed to deal with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever such a solution is appropriate and advisable. Given that the vast majority of juvenile delinquents only commit small misdemeanours, recourse to a collection of alternative measures which spare them from judicial proceedings should be a well-established practice that can and should be used in most cases.

Presently, criminal mediation is in its infancy in the majority of Swiss cantons, following the



example of the best practices of the Order of Mediation in the canton of Fribourg.

VIII) Re-adaptation / reinsertion of children:

Civil society: The potential of personal services must be fully exploited by adapting such services as far as possible to make the convicted youth assume their responsibility. The goal must be two-fold : showing them the consequences of their actions and strengthening their personal capabilities while they begin their social development.

In Geneva, the Alternative Punishment Department (SEDPA) allows courts to place delinquents into a structured arrangement for providing services (SEDPA also manages youth detention centres).

IX) Training of professionals:

Training in Human Rights for Swiss Police Schools in a comprehensive way to deal with children and adolescents , including all police personnel (canton Geneva and Solothurn)

X) Role of the media: No mention regarding Juvenile Justice

XI) Child participation and sensibilization:

According to the Delegation of Switzerland, significant progress had been made in the participation of children and youth in planning and decision-making.

Some cantons, such as the one of Fribourg, had laws on schools which dealt with the curriculum and the participation of children in topics or issues in which their rights are concerned.

The right of the child to be heard is vindicated in Swiss criminal law under the Droite Penal des Mineurs when the juvenile is author, victim, and witness or called to provide information.

Under Article 4(2) of the new Procedure Penale des Mineurs, it expressly clarifies that the fundamental rights of the child, particularly the right to be heard, must be respected throughout all stages of the proceedings.

XII) Other relevant areas:

1.2. GENERAL OBSTACLES:

- Negative to the Committee recommendations of the need or rising the age of minimum criminal responsibility, at least 12 years as the international standards enshrined.
- Different terminology when we are talking about the best interest of the child, and the one that Swiss legislation use on a normal basis, well-being of the child. It leads to mistaken concepts.
- Lack of harmonization between the legislation of different cantons regarding the rights of the child.
- Lack of detention facilities, so therefore, lack of separation between children and adults.

1.3. INTERAGENCY PANEL ON JUVENILE JUSTICE: Did the Committee ask any questions in relation to technical advice and assistance in juvenile justice or if they mention the Panel in any way?

No



Yes : (specify)

2. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:

- While welcoming the withdrawal of the State party's reservation to articles 5, 7 and 40 (2) (b) (v) and (vi) of the Convention, the Committee regrets that the State party still maintains its reservations to articles 10 (1), 37 (c) and 40 (2) (b) (ii) and (iii).

The Committee reiterates its previous recommendations (CRC/C/15/Add.182, para. 7) and in light of the 1993 Vienna Declaration and Programme of Action, urges the State party to consider withdrawing the remaining reservations to the Convention.

- On the legislation: While welcoming the adoption of various child-related legislative measures at federal and cantonal level to ensure further conformity of domestic legislation with the Convention, the Committee is concerned that these efforts do not cover all areas of the Convention.

The Committee recommends that the State party continue and strengthen its efforts to comprehensively harmonize federal and cantonal laws with the Convention.

- On the Right to express their views: Respect for the views of the child

28. The Committee notes the State party's ongoing efforts to ensure respect for the views of the child in family proceedings, protection cases, juvenile justice and other relevant areas as well as involve children in political planning and decision-making processes at municipal level. However, it is concerned that the respect for the views of the child is not systematically ensured and implemented in practice in all matters that affect them and that cantonal disparities exist in implementation. The Committee is further concerned at insufficient training of professionals working with and for children in this regard.

29. In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party take measures to strengthen this right in accordance with article 12 of the Convention. To that effect, it recommends that the State party:

(a) Strengthen its efforts to ensure that the right of the child to be heard applies to all judicial and administrative proceedings affecting children and that due weight is given to their views;

(b) Intensify its efforts to ensure that children have the right to express their views freely in all matters affecting them, and have those views given due weight in schools and other educational institutions, the family, as well as political planning and decision processes, with particular attention to children in marginalized and disadvantaged situations; and

(c) Ensure that professionals in the judicial, welfare and other sectors dealing with children systematically receive appropriate training on how to ensure children's meaningful participation.

- Corporal punishment

38. While noting that there have been amendments to criminal and civil legislation which strengthen the protection of children from assault, the Committee regrets that corporal punishment is still not considered as physical violence if it does not exceed the level generally accepted by society, and that it is not explicitly prohibited in all settings.

39. The Committee draws the attention of the State party to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and urges the State party to explicitly prohibit all practices of corporal punishment in all settings and strengthen its efforts to promote positive, non-violent



and participatory forms of child-rearing and discipline.

- Administration of juvenile justice

72. The Committee notes the entry into force of the new Juvenile Criminal Law Act in 2007 and the Juvenile Criminal Procedure Code in 2011, which inter alia raise the minimum age of criminal responsibility from 7 to 10 and provide for the separation of children from adults in pre-trial detention and imprisonment. However, the Committee is concerned that:

- (a) The minimum age of criminal responsibility still remains below internationally acceptable standards;
- (b) Free legal aid for children is not always ensured;
- (c) Still only a few defence lawyers are specialized in juvenile criminal law and procedures; and
- (d) Children are still not separated from adults in detention centres.

73. In the light of its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party:

- (a) Raise the minimum age of criminal responsibility to an internationally acceptable level;
- (b) Ensure that children have access to free legal or other appropriate assistance;
- (c) Ensure that all persons involved in the administration of juvenile justice, including defence lawyers, receive appropriate training;
- (d) Expedite the process of establishing adequate detention facilities in order to ensure that children are not detained together with adults.

3. DCI perspective/response *(Only if the country has a DCI-section):*

- info on what DCI sections do on these issues
- recommendations by DCI sections

(to get this information, send the report to the National section and ask them if they have any information for this part).

Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of SWITZERLAND
- United Nations Committee on the Rights of the Child. Initial report and 2nd/4th periodic reports of SWITZERLAND (State reports).
- SWITZERLAND NGOs' Working Group 'on Protection of Children Rights'

4. ANNEX:

5.1. CRC members present

Mr. Bernard Gastaud

Ms. Olga. A. Khazova

Mr. Gehad Madi

Ms. Maria Herczog



Ms. Yasmeen Muhamad Shariff

Ms. Amal Aldoseri

5.2. Composition of country delegation

Mr. Stephan Cueni, Director of the International Affairs Office on social rights, Bern

Ms. Anne- Claude Demierre, State's Counsellor, Director of the Health and social affairs of the canton of Fribourg, member of the committee on the Conference for the cantonal Directors of social affairs, Fribourg.

Ms. Martine Lachat, Responsible of the Childhood and Youth. Conference for the cantonal Guidelines and Directors of social affairs.

Ms. Claudina Mascetta, Chief of the International Organisations Sector, Federal Office for social rights.

Mr. Jean- Marie Bouverat, International Organisations Sector, Federal Office for social rights.

Ms, Regula Bernhard Hug, Childhood and Youth Section in the Federal Office for social rights, Bern.

Ms. Liliane Galley, Childhood and Youth Section in the Federal Office for social rights, Bern

Ms. Anita Marfurt, International Penal Law Unit, Federal Office for Justice, Bern

Ms. Naima Muller , Human Rights Section, from the Directorate of International Public Law in Bern.

Ms. Debora Gianinazzi, Civil Law Unit , Federal Office for Justice Bern.

Mr. Jonas Montani, State Secretariat on Migration, Bern

Mr. Karl Lorenz, from the State Secretariat on Migration, Bern

Mr. Laurent Knubel, Suppliant the Director of the service on coordination against trafficking on human beings and smuggling. Federal Police Office, Fedpol Bern.