



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

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Committee against Torture

**Eighth periodic report of Switzerland submitted under
article 19 of the Convention under the simplified reporting
procedure, due in 2019* ****

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* The present document is being issued without formal editing.
** The annexes to the present document are available on the Committee's web page.



Preliminary remark

1. The Committee against Torture considered the seventh periodic report of Switzerland (CAT/C/CHE/7) on 3 and 4 August 2015 and adopted its observations (CAT/C/CHE/C0/7) on 7 September 2015. For the submission of its eighth periodic report, Switzerland agreed to follow the new optional procedure proposed by the Committee. At its sixty-second session (held from 6 November to 6 December 2017), the Committee adopted a list of issues to be addressed by Switzerland (CAT/C/CHE/QPR/8) in its eighth periodic report. The present report is therefore structured and drafted in the form of responses to the questions contained in the list of issues to be addressed.

Replies to the questions raised in the list of issues prior to submission of the report (CAT/C/CHE/QPR/8)

Articles 1 and 4

Reply to the questions raised in paragraph 2

2. Concerning the recommendation that Switzerland should make torture a specific criminal offence in domestic law, it should be emphasized that the Swiss legal framework within which torture is penalized is fully compliant with the Convention. Article 4 (1) of the Convention provides that “each State Party shall ensure that all acts of torture are offences under its criminal law”. Article 1 of the Convention defines the term “torture” as meaning “any act inflicted by or at the instigation of a public body by which severe pain or suffering, whether physical or mental, is intentionally inflicted on persons for such purposes as obtaining from them information or a confession, punishing them or intimidating them”. States are thus required to ensure that all acts encompassed by these two articles are criminal offences, and this is precisely the case in Switzerland.

3. Firstly, in the context of crimes against humanity, torture is explicitly criminalized under article 264a of the Swiss Criminal Code. Paragraph 1 (f) of this article establishes a custodial sentence of not less than 5 years for any person who, as part of a widespread or systematic attack directed against a civilian population, inflicts severe pain or suffering or serious injury, whether physical or mental, on a person in their custody or under their control.

4. As regards ordinary offences, the criminal provisions in force already cover all the forms of conduct referred to in article 1 of the Convention and establish corresponding penalties. Attacks against life, physical, sexual and psychological integrity and freedom (threats, coercion, abduction and kidnapping), abuse of authority and obstruction of criminal proceedings are all expressly penalized, and acts that place a person’s life or health at risk are also severely punished. Thus, all conduct covered by the Convention is criminalized under Swiss law, including psychological torture, simulated drowning and other actions intended as a form of punishment, to give just a few examples of conduct sometimes cited by members of the Committee against Torture as evidence of the alleged lacunae in Swiss law.

5. It should also be noted that aiding and abetting a criminal offence is punishable under Swiss law (Criminal Code, arts. 24 and 25), as is attempting to aid and abet (Criminal Code, art. 22).

6. The penalties established for the above-mentioned offences are unquestionably proportionate and a clear deterrent, and are fully in line with all other penalties established under the Criminal Code. If one or more offences are committed at the same time, the sentence for the most serious offence may be increased by half of the maximum penalty prescribed for that offence (Criminal Code, art. 49). Moreover, the statutes of limitation are sufficiently long to allow the criminal investigation authorities to carry out their work without undue haste, while complying with the principle of expeditiousness enshrined in article 5 of the Swiss Criminal Procedure Code. These time limits, which vary between 7 and 30 years depending on the seriousness of the offence, were in fact extended during the review of the general section of the Criminal Code, and they cease to accrue once the first-

instance judgment has been handed down (Criminal Code, art. 97). In the context of crimes against humanity, offences of torture cannot be time-barred (Criminal Code, art. 101).

7. No problems arise with regard to international judicial cooperation (mutual assistance and extradition), since acts classified as torture by the requesting State are considered offences under Swiss law, as mentioned above.

8. In order to highlight the extent to which Switzerland takes a zero-tolerance approach to acts of torture, it should be noted that the use of coercion, force, threats, promises, deception and other methods that may compromise a person's ability to think or decide freely are prohibited when taking evidence (Criminal Procedure Code, art. 140). Any evidence obtained using such methods is completely inadmissible (Criminal Procedure Code, art. 141 (1)).

9. In the light of these factors, Switzerland considers that the addition of a specific legislative provision expressly penalizing torture is unnecessary and that existing domestic legislation complies with articles 1 and 4 of the Convention.

Article 2

Reply to the questions raised in paragraph 3

10. With regard to the right of access to a lawyer, including when a person is stopped and questioned by the police (*apprehension*), it should be borne in mind that the sole purpose of stopping and questioning persons pursuant to article 215 of the Criminal Procedure Code is to establish their identity and to determine, based on the facts of the situation, whether they could be in any way connected with an offence. The fact that the article explicitly states that the police may "question the person briefly" means that the interview must be short and exclusively for the purpose of determining whether further investigation is required.¹ Should a person come to be suspected of having committed an offence, stopping and questioning becomes provisional arrest within the meaning of article 217 of the Criminal Procedure Code, in which case the police must inform the suspect of his or her right to legal counsel (Criminal Procedure Code, art. 219 (1), read in conjunction with art. 158). Swiss legislation thus fully complies with the principles implemented by the European Court of Human Rights, which has indicated that "access to a lawyer should be provided, as a rule, from the first police interview of a suspect".²

11. Similarly, in-force legislation guarantees suspects the right immediately to inform their next-of-kin, their employer or the relevant embassy or consulate of their arrest (Criminal Procedure Code, art. 214).

12. With regard to medical examinations, the Federal Council recalled in its dispatch concerning the new Criminal Procedure Code that the Swiss legal system guarantees all persons arrested by the police the right to be examined by an independent doctor of their choice immediately following their arrest and whenever they so request, subject to the availability of the chosen doctor and as long as there is no risk of collusion.³ The case law of the Federal Supreme Court supports this position.⁴

13. The right to information is of key importance in Switzerland. Informing suspects of their rights goes beyond mere prescriptive formality and is essential to ensuring the validity of actions and decisions taken. Thus, pursuant to article 158 (2) of the Criminal Procedure Code, any evidence obtained without this information having been provided would be inadmissible, regardless of the offence concerned and its seriousness.⁵

¹ Jacques Michod, "Avocat de la première heure et droits de la défense", *Revue de l'avocat* 8/2010, p. 323.

² Judgment of the European Court of Human Rights of 27 November 2008, *Salduz v. Turkey*, paragraph 55.

³ Federal Gazette 2006 1371.

⁴ Judgment of the Federal Supreme Court of 21 August 2008 (1B_212/2008) (2.2.)

⁵ Jean-Marc Verniory, *Commentaire romand du Code de procédure pénale Suisse*, ed. André Kuhn and Yvan Jeanneret (Basel, Helbing Lichtenhahn Verlag, 2009), no. 26 pertaining to article 158 of the Criminal Procedure Code. This author also argues that providing partial information on rights is equivalent to providing none at all.

14. Lastly, suspects are generally able to verify compliance with due process by lodging an objection against the rulings and procedural acts of the police and the public prosecution service (Criminal Procedure Code, art. 393). They may also contest the manner in which they were treated during the first-instance proceedings and subsequently during an appeal to a higher court (Criminal Procedure Code, art. 298).

15. All of these measures guarantee the accused a fair trial.

Reply to the questions raised in paragraph 4

16. In 2011, Switzerland launched a pilot project to establish a national human rights institution, in the form of the Swiss Centre of Expertise in Human Rights.⁶ The pilot project was independently evaluated in the spring of 2015.

17. On the basis of this evaluation, the Federal Council decided on the direction that work to establish a national human rights institution should take and, in 2015, it requested the relevant government departments to propose several alternative options for the new institution.

18. In June 2016, the Federal Council was apprised of the options being considered for a lasting arrangement and commissioned the relevant departments to draft a preliminary bill for a national human rights institution on the basis of the “status quo +” model. This model envisages a permanent solution that builds on the pilot project while resolving the shortcomings identified during the evaluation. Unlike the pilot version, however, the permanent institution must have a legal basis and be empowered to dispose freely of the core funding allocated.

19. The Swiss Centre of Expertise in Human Rights was launched as a pilot version of a national human rights institution. It is a network of several university institutes that, until 2015, was also associated with a tertiary education institution and a non-governmental organization. It is financed by the Swiss federal authorities to the tune of 1 million Swiss francs per year. In return, the centre provides services as set out in annual service contracts. It also provides separately remunerated services on the basis of mandates from public authorities, NGOs and the private sector.

20. The planned national human rights institution will be an improved version of the pilot model that conforms more fully with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The plan is to provide the national institution with annual core funding of 1 million Swiss francs in the form of a grant, which would enable it to freely decide on the activities to be carried out, within the scope of its mandate. As with the pilot project, it is anticipated that the national human rights institution will also provide separate, paid services.

21. The work to establish a Swiss national human rights institution is ongoing.

22. In its decision of 28 June 2017, the Federal Council submitted the preliminary bill for consultation to the cantons, political parties and interested organizations. The consultation process was completed in late October 2017. The vast majority of position statements supported the preliminary bill. The direction of the project was confirmed, taking the comments received into account. In line with the applicable procedure, the report on the outcome of the consultation process is expected to be published together with the preliminary bill and the parliamentary dispatch.

23. The consultation process carried out between July and October 2017 confirmed the need to establish a national human rights institution in Switzerland. The proposed model for the national human rights institution will be modified to incorporate the suggestions made during the consultation procedure.

Reply to the questions raised in paragraph 5

24. The National Commission for the Prevention of Torture had a budget of approximately 0.8 million Swiss francs for the year 2017–2018. It is free to dispose of its funds as it sees fit but must operate within the limits of its budget; there are currently no plans to increase its financial resources.

⁶ See Switzerland’s report of 28 May 2014, para. 9.

25. Every year the Commission publishes recommendations relating to a range of areas, including: material conditions of detention (cell lighting, meals, outdoor exercise); body searches; visits from family members, doctors and legal counsels; medical and psychiatric care of detainees, in particular those at risk of suicide; the disciplinary regime (the Commission considers that preliminary detention following arrest should not exceed 14 days); and the separation of pretrial detainees, those serving sentences, persons in administrative detention under legislation on foreign nationals and prisoners in high-security wings. Pursuant to article 123 (2) of the Federal Constitution, responsibility for enforcing sentences and executing measures falls to the cantonal authorities. The same applies in the case of administrative detention (Foreign Nationals and Integration Act, art. 80 (1)). It is thus the responsibility of the cantonal authorities to implement the recommendations of the Commission.

26. In this context, it should be pointed out that in 2013 the decision was taken to establish the Swiss Centre of Expertise in Prison and Probation, which officially became operational in August 2018. The Swiss Centre of Expertise in Prison and Probation supports the Swiss Conference of Cantonal Justice and Police Directors, the intercantonal concordat authorities and the cantons in the strategic planning and development of law enforcement in Switzerland. It aims to harmonize practice at the cantonal level and under the provisions of the intercantonal concordats in order to guarantee minimum standards in the enforcement of criminal penalties at the national level. For example, the Centre is currently developing minimum standards for the psychiatric care of prisoners with psychological disorders in Switzerland, with the particular aim of implementing the recommendations of various international bodies.

Article 3

Reply to the questions raised in paragraph 6

27. Before addressing measures for assessing the risk of violating the principle of non-refoulement, it is important to stress that the Committee of Ministers of the Council of Europe, the body responsible for supervising the execution of judgments of the European Court of Human Rights, was satisfied with the measures taken both at the individual and the general level to fully execute the two judgments in question and adopted its final resolutions in these cases on 7 December 2018 and 18 April 2018.⁷

28. At this point it is worth recalling that the judgments of the European Court of Human Rights in the cases of *X v. Switzerland*, of 26 January 2017, and *A.I. v. Switzerland*, of 30 May 2017, concern asylum and not extradition. Extradition cases differ from those involving removal from Swiss territory on the basis of Swiss law on foreign nationals.

29. With regard to extradition, article 2 of the Federal Act on International Mutual Assistance in Criminal Matters prohibits extradition cooperation – and mutual assistance in general – with a requesting State in cases where:

- There is reason to believe that the procedure in the requesting State does not comply with the procedural principles laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant on Civil and Political Rights;
- The request for mutual assistance is aimed at prosecuting or punishing the person in question for his or her political opinions, membership of a particular social group, race, religion or nationality;
- There is a risk of aggravating the situation of the person in question for any of the reasons indicated above; or
- The request contains other serious irregularities.

30. On receipt of a formal request for extradition from another State, the Federal Office of Justice, which is the competent Swiss authority in extradition matters, assesses – on a case-by-case basis – the potential human rights risks involved in extraditing the person

⁷ See resolutions CM/ResDH(2017) 414, available at <http://hudoc.exec.coe.int/eng?i=001-179752>, and CM/ResDH(2018)170, available at <http://hudoc.exec.coe.int/eng?i=001-182720>.

requested to the requesting State. Swiss case law distinguishes between three types of request, namely: requests from States whose respect for human rights is not, in principle, in doubt; requests from States to which extraditions may be authorized provided that specific assurances are obtained; and requests from States to which extradition is not permitted because there is a real risk of prohibited treatment:⁸

- The first category consists of requests for extradition to countries that are established democracies with a rule of law culture – particularly Western countries – and do not present any problems in terms of respect for human rights or, therefore, under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁹ In such cases, assistance may be given – in principle – without any particular assurances being required. These countries include European Union States and the majority of the member countries of the Council of Europe.
- The second category consists of cases where there is a risk of violations of human rights or fundamental principles. However, this risk can be eliminated – or at least greatly reduced – by obtaining diplomatic assurances from the requesting State, so that the residual risk remains purely theoretical; these assurances relate to the commitment of the requesting State to upholding the fundamental rights of the persons concerned after their surrender and enable the Swiss authorities to ensure that the foreign authorities actually deliver on the assurances they provide. Countries in this second category have, for the most part, joined the Council of Europe and are therefore subject to its oversight, meaning that they can be assumed to respect the rights established under the European Convention for the Protection of Human Rights and Fundamental Freedoms. For this category of States, a theoretical risk of violation is not sufficient grounds to refuse extradition, otherwise Switzerland would no longer be able to extradite wanted persons to these countries, thus enabling fugitive criminals to evade justice and thereby undermining the basis for extradition. This second category of countries consists of members of the Council of Europe including the Russian Federation and Ukraine and third States such as Mexico and Brazil.
- The third category consists of countries in which there are particular reasons to believe that the requested persons are at risk of torture, and that this risk cannot be eliminated or mitigated by obtaining assurances; in such cases, extradition is precluded. This is the case, for example, for the Islamic Republic of Iran.¹⁰

31. When Switzerland is considering cooperating on extradition with a State for the first time, or if the human rights situation in the requesting State has deteriorated since the previous extradition arrangement with that State, indicating that there is a real risk of the fundamental rights of the person facing extradition being violated, the Federal Office of Justice will examine all the circumstances of the case at hand. This analysis is based on the political and legal situation of the requesting State and also takes into account the personal situation of the person whose extradition is sought.

32. In order to determine whether extradition would be in conformity with international law in the above-mentioned scenarios, and to assess the political and legal situation in the requesting State, the Federal Office of Justice may, *inter alia*, request a report from the Directorate of Public International Law of the Federal Department of Foreign Affairs. The Directorate consults various domestic bodies as well as the Swiss representation in the requesting State. It may also refer to reports from non-governmental organizations and/or international institutions. This information is summarized in a confidential report which is then forwarded to the Federal Office of Justice with a preliminary recommendation relating to the extradition. The decision to initiate and/or continue the extradition procedure lies with the Federal Office of Justice, which has, where appropriate, the power to use any useful means at its disposal to perform the necessary checks. In doing so, it takes into account all relevant information available, including any grievances raised by the person to be extradited and even certain reports from non-governmental organizations. Persons whose

⁸ See, for example, ATF 134 IV 156 (6.7), judgment of the Federal Supreme Court 1C 176/2014 of 12 May 2014 (4.1); judgments of the Federal Criminal Court RR. 2016.199 and RP. 2016.56 of 29 December 2016 (2.3).

⁹ See ATF 134 IV 156 (6.7).

¹⁰ See judgment of the Federal Criminal Court 2010.56 (6.4.2).

extradition has been requested are invited to a hearing conducted by the Swiss criminal prosecution service at the behest of the Federal Office of Justice, during which they are informed in person of the formal extradition request submitted by the foreign State, in accordance with article 52 (1) and (2) of the Federal Act on International Mutual Assistance in Criminal Matters. Subsequently, they are also informed in writing, in line with the provisions of article 55 (1) of the same law. The Federal Office of Justice takes into account any information provided by the person to be extradited. This information concerns not only the grievances usually raised in an extradition procedure but also any arguments that may be raised as part of an asylum application; article 55 (a) of the Federal Act on International Assistance in Criminal Matters explicitly provides for all documents relating to asylum to be examined in parallel to the extradition procedure. When the Federal Office of Justice decides to authorize an extradition, it is first necessary to establish that all the fundamental rights of the extradited person will be respected, pursuant to article 2 of the Federal Act on International Assistance in Criminal Matters. It is worth clarifying that failure by a requesting State to respect the diplomatic assurances it has provided constitutes a violation of its international obligations.¹¹

33. It is also worth recalling that the principle of non-refoulement applies to requests for the extradition of persons who enjoy refugee status pursuant to article 33 of the Convention relating to the Status of Refugees of 28 July 1951 and article 5 of the Federal Asylum Act. It is not necessary for refugee status to have been obtained in Switzerland. However, these protective provisions prevent the extradition of the person concerned to his or her State of origin only.

34. In normal extradition practice, the Federal Office of Justice does not generally need to employ its own medical expert. However, if necessary, the Federal Office of Justice may request one or more expert opinions to clarify the state of health of the person concerned. To date, a medical opinion established on the basis of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) has only been submitted once during extradition proceedings, namely in the case of Nekane Txapartegi, which is addressed in paragraph 48 of this document.

35. As mentioned above, during the extradition proceedings the person whose extradition has been requested may submit medical certificates and/or reports as evidence relating to the formal foreign extradition request.¹² The medical certificates may relate to the potential risk of prohibited treatment following extradition, but also to any health-related issues that would constitute an obstacle to extradition. These documents are examined by the Federal Office of Justice when an extradition decision is being made. However, it should be borne in mind that a person's state of health does not in itself constitute grounds for refusing extradition within the meaning of the European Convention on Extradition and the Federal Act on International Mutual Assistance in Criminal Matters; if a person's extradition were to pose a risk to his or her health, this risk could be mitigated through a formal assurance from the requesting State that adequate medical supervision and access to care and medication would be provided. To date, the Federal Office of Justice has not had to deal with any cases in which extradition to a requesting State has actually jeopardized the extradited person's bodily integrity. In this context, it should also be highlighted that, in the course of the extradition proceedings, Switzerland also takes the steps necessary to ensure the adequate medical supervision of the person to be extradited; this may consist of placing the requested person in a closed hospital facility or providing medical transport during the extradition.

36. With respect to the credibility of the requested person's allegations, federal case law indicates that an abstract risk of violations of fundamental rights does not constitute sufficient grounds to refuse extradition.¹³ General criticism of the human rights situation in the requesting State is not a determining factor either; the burden of proof lies with the

¹¹ See Robert Zimmermann, *La coopération judiciaire internationale en matière pénale*, 4th ed. (Bern, Editions Stämpfli, 2014), no. 313, pp. 313.

¹² See, for example, judgment of the Federal Criminal Court RH.2014.18 of 9 December 2014 (4); and judgment of the Federal Criminal Court, RR.2015.73 of 23 June 2016 (4).

¹³ See judgment of the Federal Criminal Court, RR.2008.180 of 2 October 2008 (2.3).

person invoking this provision.¹⁴ Thus, requested persons need to demonstrate the probability of a serious and objective risk of a grave violation of human rights in the requesting State that is likely to affect them in a tangible manner.¹⁵

37. As a first step, the Federal Office of Justice examines the plausibility and credibility of the requested person's allegations regarding the potential existence of prohibited treatment in the requesting State. This analysis is carried out on the basis of the extradition documentation from the requesting State, the allegations filed by requested persons and the documents they have submitted in the course of the extradition proceedings. It should be noted that, in accordance with standard extradition practice and the principle of good faith governing extradition relations between States, there is no reason for the requested State to question the statements of the requesting State, barring any obvious contradictions contained therein.¹⁶ However, in case of doubt regarding possible irregularities, Switzerland may at any time formally ask the requesting State for additional information and/or to state its position on the allegations filed by the requested person.

38. Finally, if the evidence on file reveals the requested person's allegations to be credible and plausible, the opinion of an independent medical expert may be requested by the Federal Office of Justice as part of the extradition process. To date, however, recourse to such an opinion has never been deemed necessary.

39. With regard to the asylum procedure, the State Secretariat for Migration always carefully examines the risks of violations of the principle of non-refoulement. To this end, it closely examines the human rights and political situation in the asylum seeker's country of origin, working on the basis of national, international and supranational case law as well as on the guidelines of the Office of the United Nations High Commissioner for Refugees on eligibility for refugee status. As an associated country, Switzerland has been working closely with the European Asylum Support Office since 2016. In addition, the State Secretariat for Migration has an independent analytical unit responsible for processing country-of-origin information. The information it collects is taken into account when assessing applications for asylum. On 1 March 2019, changes were introduced to the asylum system as whole, with the aim of speeding up proceedings in order to ensure that decisions on whether or not to grant asylum are taken as soon as possible after the hearing and, in principle, by the same person. This will ensure that current circumstances are always taken into account when a decision is made.

40. The State Secretariat for Migration currently has no guidelines that specifically refer to the use of expert assessments as evidence pursuant to the Istanbul Protocol. The Federal Act on Administrative Procedure, however, provides that the authorities must establish the facts of the case ex officio but may request the opinions of experts (Federal Act on Administrative Procedure, art. 12 (e)). It is therefore already possible to request an expert opinion in disputed cases of suspected torture. As part of the asylum procedure, applicants are also required to cooperate in establishing the facts of their case. They may also contribute to the evidence-gathering process by providing evidence themselves. The State Secretariat for Migration will then assess, during its examination of the case, whether the evidence submitted or put forward makes a material contribution to establishing the facts of the case.

Reply to the questions raised in paragraph 7

41. In cases involving extradition subject to the prior transmission by the requesting State of formal assurances that the fundamental rights of the person facing extradition will be respected, Switzerland requires assurances that the extradited person will be able, in particular, to freely contact a Swiss diplomatic representative in the requesting State. The representative must be able to enquire about the status of the case and attend all judicial proceedings, and must be provided with a copy of the decision handed down at the end of

¹⁴ See Robert Zimmermann, *La coopération judiciaire internationale en matière pénale*, 4th ed., (Bern, Editions Stämpfli, 2014), no. 214, p. 220.

¹⁵ See judgment of the Federal Criminal Court RR.2016.199 + RP.2016.56 of 29 December 2016 (2.2) and the case law cited.

¹⁶ See judgment of the Federal Criminal Court RR.2015.253 + RP.2015.53 of 27 January 2016 (3.1) as well as the case law cited.

the criminal proceedings. Furthermore, Switzerland must be informed of any change in the place of detention of the extradited person.

42. In the event of an extradited person reporting possible breaches of duty by the foreign authorities following his or her extradition, the Federal Office of Justice will mandate the Swiss diplomatic representation in the country concerned to establish the actual state of affairs, and a report will then be drawn up. If necessary, experts, including, for example, doctors, may be consulted. In the event of doubts as to whether the assurances provided by the State to which extradition has been agreed have been violated, Switzerland must hold that State to account. Such a case arose following an extradition to Ukraine in 2016, and, after the Swiss authorities intervened, the extradited person was released by the Ukrainian authorities.

43. In practice, the monitoring system described above is a reliable and effective instrument for ensuring that the requesting State complies with the assurances provided during the extradition process. To date, complaints filed by extradited persons relating to prohibited treatment remain extremely rare and, in most cases, investigations have failed to reveal any actual violations of the assurances given by the requesting State even though monitoring measures were taken by the Swiss authorities. Even rarer are cases where extradition relations with the requesting State have had to be interrupted. This was, however, the case with India, where two persons extradited from Switzerland in 1997 were detained until 2004, then placed under house arrest, without a trial within a reasonable period of time. As a result, Switzerland ceased authorizing extraditions to India.

44. Since the Federal Office of Justice intervened with the Ukrainian authorities in 2016, in the case mentioned above, Switzerland has not identified any further cases in which applicant States have failed to deliver on their commitments. The few complaints filed with the Federal Office of Justice since then have all proved groundless.

45. However, the Federal Office of Justice is of the opinion that formal assurances must be systematically provided by certain States, and this view is reinforced by federal case law on extradition.

46. As mentioned above, formal assurances are required from European countries including the Russian Federation, Ukraine, Bulgaria, Kosovo, Moldova and Albania, and also from third countries such as Mexico and Brazil.¹⁷ The same criteria apply when extradition relations are initiated with a State for the first time or when the political and legal situation in the requesting State has deteriorated since the previous extradition arrangement.

47. Since 2015, the Federal Office of Justice has recorded some 30 extradition cases where diplomatic assurances have been formally requested. In cases where these assurances have not been provided in a timely manner or only provided in part by the requesting State, the extradition of the requested person has been systematically refused.

48. In April 2016, Nekane Txapartegi was arrested in Switzerland with a view to her extradition on the basis of a Spanish international arrest warrant entered in the Schengen Information System in 2012 and a formal extradition request submitted to the Federal Office of Justice by the Spanish Ministry of Justice in May 2015. After careful examination of the various elements of the case, the Federal Office of Justice decided to authorize the extradition of Ms. Txapartegi to Spain on 22 March 2017. For its part, the State Secretariat for Migration rejected Ms. Txapartegi's asylum application on 24 March 2017.

49. Ms. Txapartegi submitted an appeal to the Federal Criminal Court against the Federal Office of Justice's extradition decision. She also challenged the decision of the State Secretariat for Migration before the Federal Administrative Court. The Federal Administrative Court rejected her appeal, thus confirming the Federal Office of Justice's decision on extradition. The claim submitted by Ms. Txapartegi's defence counsel that her extradition related to a political offence was also dismissed.¹⁸

50. Ms. Txapartegi appealed against the judgment of the Federal Administrative Court before the Federal Supreme Court. In parallel, she was also able to obtain confirmation

¹⁷ See also Robert Zimmermann, *La coopération judiciaire internationale en matière pénale*, 4th ed. (Bern, Editions Stämpfli, 2014), no. 654, p. 667s, as well as the case law cited.

¹⁸ Judgment of Federal Criminal Court RR.2017.97 and RR.2017.69 + RP.2017.32 of 30 June 2017.

from the Spanish judicial authorities that, under Spanish law, a statute of limitations applied to the custodial sentence which she was still required to serve. The Spanish Ministry of Justice subsequently formally withdrew its extradition request. Following the withdrawal of this request, the Federal Office of Justice immediately lifted the extradition detention order relating to Ms. Txapartegi and her appeal before the Federal Supreme Court was declared to be moot.

51. On 27 November 2017, the Federal Administrative Court dismissed the claimant's appeal against the State Secretariat for Migration's decision to refuse asylum.¹⁹ In particular, the court noted that, since Ms. Txapartegi's sentence was no longer enforceable, it must follow that she no longer had any reason to fear prosecution in Spain. There were therefore no longer any relevant grounds to grant asylum or refugee status. Given these circumstances, the Federal Administrative Court was no longer required to evaluate the credibility of the claims that Ms. Txapartegi could be exposed to torture and persecution on her return to Spain, which could have justified her claim to refugee status.

Reply to the questions raised in paragraph 8

52. The adoption of the Return Directive,²⁰ which is an extension of the Schengen acquis, has led to amendments of the Foreign Nationals and Integration Act. The effect of the Directive has been to harmonize the procedure for the return of third-country nationals from outside the European Union and the European Free Trade Association, so-called third countries, residing without authorization within the Schengen zone. The Directive sets out particular requirements for removal orders and a formal procedure for the removal of persons from Swiss territory has been introduced to address previous lacunae in this area (Foreign Nationals and Integration Act, art. 64).

53. Procedures relating to removal orders are set out in article 64 ff. of the Foreign Nationals and Integration Act and in the corresponding provisions of the ordinance on the enforcement of orders for the return or deportation of foreign nationals (art. 26b to 26e). An appeal against a removal order does not have suspensive effect. However, the appellate authority – usually a cantonal court – may decide that suspensive effect will apply. This possibility corresponds to the requirements of article 13 (1) and (2) of the Return Directive. If a removal order is issued under article 64a of the Foreign Nationals and Integration Act, the foreign national may apply for the order to be suspended within the deadline for filing the appeal. The Federal Administrative Court will decide on the matter within five days of receipt of the application.

54. One of the exceptions to the rule that a formal removal order must always be issued that the Return Directive provides concerns removals based on readmission agreements concluded with other Schengen States and already in force at the time of entry into force of the Directive. In the case of readmission on the basis of a bilateral agreement, the State which takes back the person concerned is competent to carry out the return procedure in accordance with the Return Directive. For this reason, article 64 (c) of the Foreign Nationals and Integration Act provides for removal without a formal order and it is in principle also possible to waive the appeals procedure. If requested immediately by the person concerned, an order will be issued using a standard form. While this is not a requirement under the Return Directive, it ensures that the return of a person to the country of origin can be monitored in these cases as well.

55. With regard to refusal of entry and removal at the airport, article 65 of the Foreign Nationals and Integration Act provides that if entry is refused at the airport border control, the foreign national must leave Switzerland immediately. The State Secretariat for Migration will issue a reasoned and appealable decision using the form provided in annex V, part B, of the Schengen Borders Code. Appeals against such decisions do not have suspensive effect. This requirement corresponds to article 14 of the Schengen Borders Code, which is an extension of the Schengen acquis. Border control officers also follow the recommendations of the Office of the United Nations High Commissioner for Human Rights, which are explicitly mentioned in internal guidelines. However, this process does

¹⁹ Judgment of the Federal Administrative Court, case E-2485/2017 of 27 November 2017.

²⁰ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

not affect the right to apply for asylum. If a foreign national uses the right to a hearing before an injunction is granted under article 65 of the Foreign Nationals and Integration Act to indicate that he or she is seeking protection from persecution in Switzerland, this declaration is considered as an asylum application under article 18 of the Federal Asylum Act and is examined in greater detail as part of the asylum procedure.

56. Persons against whom a removal order has been issued under article 68 of the Federal Foreign Nationals Act may appeal to the competent authority. The conditions for non-refoulement are systematically examined in cooperation with the State Secretariat for Migration if the case file points to the existence of grounds to prevent the enforcement of the removal order and there are indications that the person concerned could be subjected to inhuman and degrading treatment on his or her return to the destination country. Where such grounds exist, a removal order is issued but its execution is suspended.

Reply to the questions raised in paragraph 9

57. The State Secretariat for Migration carefully examines the specific circumstances justifying the asylum application. In doing so, it takes account of the personal situation of the asylum seeker, the conditions in the State responsible under the Dublin Regulation and, if necessary, the sovereignty clause.

58. Most Dublin States have implemented directives 2013/32/EU (procedures), 2011/95/EU (qualification) and 2013/33/EU (reception). All Dublin States are also signatories of both the Convention relating to the Status of Refugees of 28 July 1951, supplemented by the Protocol relating to the Status of Refugees of 31 January 1967, and the European Convention on Human Rights, in which the principle of non-refoulement is enshrined. There is no reason to believe that Dublin States do not abide by their international commitments and do not correctly apply the asylum and removal procedures.

59. The Federal Administrative Court stated in a landmark decision²¹ on Greece that the systematic problems observed in asylum matters meant that the country could no longer be assumed to be meeting its international obligations. The Dublin procedures or readmission procedures are therefore applied by Switzerland on an exceptional basis only when the person concerned has residence status in Greece. Moreover, families are transferred to Italy only on the basis of individual assurances, in line with the case law of the European Court of Human Rights.²²

60. Persons who do not meet the entry requirements set out in article 5 of the Foreign Nationals and Integration Act, who only want to pass through Switzerland and who do not intend to apply for asylum, are readmitted to Italy by the border guards of the Federal Customs Administration under the readmission agreement of 1 May 2000. The assertion that persons have been removed illegally is therefore false.

Reply to the questions raised in paragraph 10

61. The amended Asylum Act, which entered into force on 1 March 2019, distinguishes between three different stages of proceedings with respect to free legal assistance.

- Pursuant to the amendment of the Asylum Act, all asylum seekers whose request is processed in a federal centre have the right to free advice and legal representation (Asylum Act, art. 102f (1)). The State Secretariat for Migration mandates one or more service providers to carry out these tasks.
- When an extended procedure is opened, asylum seekers may contact a legal advice agency or, exceptionally, the legal representative allocated free of charge during stages of the first-instance proceedings that are key to the decision (Asylum Act, art.102i (1), in conjunction with the new Asylum Ordinance No. 1, art. 52f (3).).

62. Appeals are handled differently depending on whether the procedure is accelerated or extended:

²¹ Federal Administrative Court judgment D-2076/2010 of 16 August 2011.

²² Judgment No. 29217/12 of 4 November 2014 in the case of *Tarakhel v. Switzerland*.

- Throughout the asylum seeker's stay in a federal centre, legal representation is assured for the appeal unless it is considered to have no prospect of success (Asylum Act, art. 102k (1) (d), in conjunction with art. 102h (4)).
- In an extended procedure, the Federal Administrative Court can appoint an official legal adviser to handle appeals (Asylum Act, art. 102m (1)).

Reply to the questions raised in paragraph 11

63. Annex 2 contains statistical data on asylum requests lodged from 2015 to 30 June 2018, disaggregated by sex, country of origin and age group. No data on ethnicity are officially recorded.

64. Annex 3 contains statistical data on asylum decisions handed down from 2015 to 30 June 2018, disaggregated by sex, country of origin and age group. No data on ethnicity are officially recorded.

65. The reasons for which asylum was granted are not reflected in the statistical data. It is not therefore possible to indicate the number of persons who were granted asylum because they had been tortured or would be in danger of being tortured if they were returned.

66. During the past three years, a total of 11,129 asylum seekers have been returned to their countries of origin or transferred to another European State responsible for carrying out the asylum procedure under the Dublin association agreement. The details of these cases and a list of the countries to which these persons were extradited, expelled or returned are provided in annex 3.

67. The reasons for which an appeal was lodged are not reflected in the statistical data. It is not therefore possible to indicate the number of appeals that were lodged because a person feared becoming a victim of torture if returned to his or her country.

Articles 5, 7 and 8

Reply to the questions raised in paragraph 12

68. With regard to the question as to whether Switzerland has rejected any requests from another State for the extradition of an individual suspected of having committed acts of torture and has prosecuted the individual itself, to date the Federal Office of Justice has not dealt with any extradition cases in this way. As well as having the possibility of inviting the requesting State to delegate the criminal proceedings to Switzerland under article 37 (1) of the Act on Mutual Assistance in Criminal Matters, Switzerland could assume responsibility for the criminal proceedings of its own motion, notably under articles 6 or 7 of the Criminal Code, which provide that the Swiss authorities are competent to initiate criminal proceedings for offences committed abroad and prosecuted under an international agreement when the offence is committed either by or against a Swiss national.

Article 10

Reply to the questions raised in paragraph 13

69. The following paragraphs contain information on the training courses and programmes offered for staff involved in the custody, interrogation or treatment of persons deprived of their liberty.

70. The seventh periodic report submitted by Switzerland to the Committee included a detailed description of the training courses offered to staff by the Swiss Centre of Expertise in Prison and Probation. The comprehensively revised training programme followed by students who wish to obtain a federal professional qualification as a prison officer, which is a protected title, began in August 2018. The new examination will be held for the first time when the first intake finishes the programme in July 2020. The management training programme run by the Swiss Centre of Expertise in Prison and Probation, which has also been revised, began at the start of 2019. This course leads to a federal diploma for prison

management experts and is aimed at persons who occupy supervisory positions in the prison sector. The first examination will be held in 2021.

71. Each year, 180 to 210 future prison officers from all over Switzerland begin their basic in-service training at the Swiss Centre of Expertise in Prison and Probation, which lasts for 15 weeks spread over two years. The trainees are persons who have been recruited by a correctional institution as future specialists and who are following the training programme, after a period of induction, in order to obtain the federal professional qualification.

72. Every two years, a maximum of 48 persons begin the management training programme. It is generally aimed at persons who already occupy a supervisory position at a correctional institution or who are about to take on such a role.

73. The examination and the training leading up to it are developed on the basis of a “competency profile”. The first stage in this process is to draw up the profile in consultation with persons working in the relevant professional field. Once the competency profile has been agreed, the second stage is to determine the competencies to be assessed. It is only after this decision has been made that the third stage can begin and the training (training objectives, pedagogical framework, teaching methods) leading up to the examination is designed.

74. The functional competency profile encompasses the following areas: looking after and supporting detainees; organizing the work and leisure of detainees; maintaining safety and order among detainees; ensuring that detainees remain in good health; self-management and cooperation within the organization.

75. In the examinations, candidates must demonstrate that they have the required knowledge, understanding, routines and analytical skills in all their areas of activity. They must also complete a guided case study consisting of several different tasks. The aim is to ascertain whether they can analyse, formulate and implement the key activities and processes in specific cases. They must also carry out various tasks as part of an oral and practical examination.

76. Under a similar process, the new competency profile for managers has been reworked under the supervision of the State Secretariat for Education, Research and Innovation.

77. The new updated functional competency profile includes 37 competencies deemed important for the performance of day-to-day work, which can be grouped into the following categories: managing the employees of a detention facility; organizing the work of correctional institution staff; organizing the daily life of detainees; ensuring safety and order within the institution; working with internal and external partners.

78. One of the essential social and personal competencies that should be built on during the training is having a humane general attitude: experts in the management of places of deprivation of liberty must:

- Treat staff and detainees with respect
- Prevent any form of discrimination
- Know how to strike a balance between treating people equally and treating them as individuals

79. All functional competencies and performance criteria may be assessed in the examinations. In both the written response to the practical example provided and in the oral case study, it is essential that candidates demonstrate respect for the relevant legal bases, which include fundamental rights, human rights, the European Prison Rules and the Convention against Torture.

80. Every year, almost 800 aspiring police officers are trained in the above-mentioned areas using a Swiss Police Institute training manual on ethics and human rights.

81. The breakdown between subjects and the time allotted to the trainees is the responsibility of the training academy.

Reply to the questions raised in paragraph 14

82. To monitor the quality of this training, assessments are organized during the training phase. On the basis of these assessments it should be possible to ascertain whether the prospective prison officers have acquired the competencies specified in the functional competency profile, which also includes knowledge of human and fundamental rights such as human dignity and the prohibition of torture. The assessment tools enable the trainers to verify, in the course of the two-year training phase, whether the competencies specified in the qualifications profile, including the theoretical knowledge, practical skills and professional conduct requirements, have been acquired. The assessment also encompasses knowledge of human rights and fundamental rights, including knowledge of the European Convention on Human Rights, the European Prison Rules, the code of conduct for prison personnel and the Convention against Torture.

83. At the end of the training and once the diploma has been obtained, responsibility for monitoring compliance with the relevant provisions lies with the correctional institutions.

84. In the management training programme, each module ends with an assessment of competencies. Candidates must pass all the competency assessments in order to be admitted to the federal examination for experts in the management of places of deprivation of liberty.

Article 11**Reply to the questions raised in paragraph 15**

85. The cantons are competent to order detention under the Dublin procedure pursuant to article 76a of the Foreign Nationals and Integration Act. The cantonal authorities and courts must take into consideration the case law of the Federal Supreme Court, in line with the general legal principle of *iura novit curia*.

86. Article 76a of the Foreign Nationals and Integration Act authorizes the competent cantonal authority to detain the foreign national concerned in order to ensure his or her removal to the Dublin State responsible for the asylum proceedings if there are specific reasons to suspect that he or she intends to evade removal and provided that detention is proportional and less coercive alternative measures cannot be applied effectively. The legality and appropriateness of detention are reviewed by the competent compulsory measures courts, in line with the provisions of article 80a of the Foreign Nationals and Integration Act.

87. Article 64e of the Foreign Nationals and Integration Act provides the possibility of placing the person concerned under an obligation to report to an authority, to provide appropriate financial security and to hand in travel documents as an alternative to detention ordered under the law on foreign nationals. The person concerned may also be required not to leave the place of residence to which he or she was assigned or not to enter a specific area pursuant to article 74 of the Foreign Nationals and Integration Act.

88. The canton competent to carry out the deportation under article 69 of the Foreign Nationals and Integration Act and article 46 of the Asylum Act decides in each individual case which measures (whether coercive measures or alternatives to detention) are appropriate.

Reply to the questions raised in paragraph 16

89. Between 2015 and 2017, the average period of administrative detention ordered under the law on foreign nationals was 24 days in Switzerland as a whole (not including temporary detention within the meaning of article 73 of the Foreign Nationals and Integration Act). The majority of cantons report an average detention period of between 18 and 26 days.

90. Regarding specialized structures for the reception of migrants, the Confederation is responsible for the care and housing of asylum seekers during the first phase of the procedure. The federal asylum centres take into account the specific needs (for example, for separate rooms/floors or different places of shelter) of the different categories of asylum seekers (unaccompanied asylum-seeking children, families, women with and without children). Some regions (for example, Basel) have accommodation reserved exclusively for

unaccompanied asylum-seeking children, but not all the federal asylum centres in Switzerland have specific structures or day units.

91. The accommodation situation in the cantons is very volatile and can change on a monthly basis. It is therefore not possible to provide an overview of the number of accommodation centres in each canton. Depending on the canton, asylum seekers may be housed in collective accommodation run by the canton or placed directly in apartments (under the responsibility of the communes) or may only receive individual accommodation after a decision has been made. The Conference of Cantonal Directors of Social Services has issued recommendations on the reception of certain groups of asylum seekers, namely, recommendations on unaccompanied asylum-seeking children²³ and recommendations on emergency assistance.²⁴

92. The Foreign Nationals and Integration Act, which governs entry and exit to and from Switzerland and the stay of foreign nationals, sets out the administrative measures to which irregular migrants may be subjected: detention in preparation for departure; detention pending deportation; and coercive detention (Foreign Nationals and Integration Act, arts. 75 ff.) In principle, irregular migrants are not housed in pretrial detention or correctional facilities because the sanction imposed on them is not criminal but administrative in nature (notwithstanding article 115 of the Foreign Nationals and Integration Act, which provides that anyone who stays illegally in Switzerland may receive a custodial sentence). Article 81 (2) of the Act further provides that placing irregular migrants with pretrial detainees or convicted prisoners must be avoided if possible. The articles does, however, allow that such situations may be permitted on a temporary basis during periods of excess demand for accommodation in administrative detention facilities.

93. Currently, in a number of cantons, special sections of regional or district prisons are used for administrative detention, with the persons concerned being clearly separated from other detainees. However, some cantons are planning to establish or enlarge specialized facilities for administrative detention. This is the case in Zurich, which is looking to use its airport prison (*Flughafengefängnis*) solely for administrative detention. Other projects are in progress at the detention facilities in La Brenaz in Geneva, Altstätten in Aargau (this project was given the green light by popular vote in November 2018),²⁵ Solothurn and Sion in Valais, where a new building reserved exclusively for administrative detention will be built as part of the Vision 2030 project for the reform of the current prison system of Valais, which will involve the construction of new prison buildings and the conversion and renovation of existing ones. Once these projects are completed, a sufficient number of places to meet the needs for administrative detention should be available and it should no longer be necessary to use special sections of regional or district prisons.

Reply to the questions raised in paragraph 17

94. Explanations regarding the measures envisaged to ensure that migrant families with children are not detained or, if they are, that detention is used only as a measure of last resort, are provided in the following paragraphs.

95. Under article 69 of the Foreign Nationals and Integration Act and article 46 of the Asylum Act, the cantons are responsible for enforcing removal orders. In each specific case, it is the canton competent to order coercive measures pursuant to the law on foreign nationals that decides which measures are most appropriate for the discharge of its mandate. The legality and appropriateness of administrative detention, as provided for in the law on foreign nationals, are reviewed by the competent compulsory measures courts in accordance with articles 80 (2) to (5) and 80a (3) of the Foreign Nationals and Integration Act. It is therefore exceptional for coercive measures to be ordered in respect of families and minors. Persons in this category are generally exempted from administrative detention and are deported directly from their place of residence.

²³ Conference of Cantonal Directors of Social Services recommendations on unaccompanied children and young persons in the area of asylum (22 June 2016).

²⁴ Recommendations on emergency assistance for persons required to leave the country as a result of asylum decisions (31 August 2012).

²⁵ See paragraph 180 for details.

96. Pursuant to article 80 (4) of the Foreign Nationals and Integration Act, in no event may any order for detention in preparation for departure, detention pending deportation or coercive detention be issued in respect of children or young people who have not yet attained the age of 15. The detention under the Dublin procedure of children and young persons under the age of 15 years is likewise prohibited, in accordance with article 80a (5) of the Act.

97. It is also worth mentioning that, on 26 June 2018, the Control Committee of the National Council adopted a report on the administrative detention of asylum seekers²⁶ that contained a number of proposals, notably recommendations 4 and 5 on the detention of minors and places of detention. On 28 September 2018, the Federal Council issued the following response to recommendation 4: “The State Secretariat for Migration therefore requests the cantons not to place minors under the age of 15 years old in administrative detention facilities and to consider other options for enforcing deportation orders against families.”²⁷ The Swiss authorities are therefore aware of this issue and working to improve the situation in practice.

Reply to the questions raised in paragraph 18

98. From 2015 to 2017, 27,754 asylum applications from minors were registered. During the same period, administrative detention was ordered against 83 minors (not including temporary detention under article 73 of the Foreign Nationals and Integration Act), which is 0.3 in percentage terms. It should, however, be noted that these 83 cases include cases covered by the Foreign Nationals and Integration Act, meaning persons who have not lodged an asylum application. The average length of detention was 22 days. Given the small number of cases, no canton-by-canton assessment has been carried out.

99. Housing, assistance, schooling and any medical supervision needed are the sole responsibility of the canton to which the unaccompanied asylum-seeking child is assigned.

100. In view of this provision, in May 2016 the Conference of Cantonal Directors of Social Services issued recommendations to the cantons with a view to harmonizing the measures that fall under their responsibility (housing, care, legal representation, training, integration, etc.). These recommendations stress that housing allocations must take into account the specific needs of unaccompanied minors and the best interests of the child. The final decision on accommodation is made by the minor’s legal representative and the situation is regularly reassessed. The principle of family unity must also be respected.²⁸

101. When an unaccompanied asylum-seeking child lodges an asylum application at the border, he or she is immediately referred to a federal centre for asylum seekers so that he or she can be registered and promptly assigned to a canton. A legal representative is designated for each unaccompanied asylum-seeking child. Should an unaccompanied asylum-seeking child disappear, the disappearance is immediately reported to the cantonal authorities, and it is their responsibility (that is, the responsibility of the judicial or other cantonal authorities) to decide on the appropriate actions to take in each specific case, which might include, for example, issuing a missing persons notice.

Reply to the questions raised in paragraph 19

102. There are no statistics on the occupancy rate of each place of deprivation of liberty. However, statistics on the occupancy rates for each group of cantons under the relevant concordats (i.e. the cantons of Central and North-Western Switzerland, the cantons of Eastern Switzerland and the French and Italian-speaking (“Latin”) cantons) are available for the years 2015, 2016 and 2017 (status report from the database for November each year). These may be found in annex 5.

103. To summarize, nationally the occupancy rate decreased between 2015 and 2016, before increasing slightly in 2017. However, the 2017 rate remains lower than the 2015 rate.

²⁶ FF 2018 7491. <https://www.parlament.ch/centers/documents/fr/bericht-gpk-n-admin-haft-asylbereich-2018-06-26-f.pdf>.

²⁷ FF 2018 7583, 7590 (<https://www.admin.ch/opc/fr/federal-gazette/2018/7583.pdf>).

²⁸ For more information on these recommendations: Conference of Cantonal Directors of Social Services recommendations on unaccompanied children and young persons in the area of asylum of 20 May 2016.

The same pattern is evident in the data for the Latin group of cantons. Within this group, prison overcrowding is found in the cantons of Vaud and Geneva but Neuchâtel, Jura, Fribourg, Valais and Ticino have much lower occupancy rates. In the Eastern Switzerland group of cantons, the occupancy rate has continuously decreased. It must be stressed that all the 2017 occupancy rates are lower than the 2015 rates.

104. Regarding the measures taken or envisaged to reduce prison overcrowding at Champ-Dollon in Geneva, 100 additional units for prisoners serving sentences have been built at La Brenaz, Geneva, and were brought into service in spring 2016. Accordingly, 100 persons serving their sentences at Champ-Dollon were transferred to La Brenaz.

105. Construction of the new Dardelles facility in Geneva began in 2020 and the prison is expected to open in 2022, providing accommodation for 450 convicted prisoners. This will allow for all 398 places at Champ-Dollon in Geneva to be allocated to pretrial detainees (of the 625 detainees held there as at 31 December 2017, 235 were convicted prisoners) and also for essential renovation and conversion work to be carried out there. The 160 convicted prisoners held at La Brenaz, Geneva, which has a total capacity of 168, will subsequently also be transferred to Dardelles, and La Brenaz will then be reserved for administrative detention.

106. Regarding care for persons with serious mental illness, pursuant to article 59 (1) of the Criminal Code, courts may order inpatient treatment if the offender is suffering from a serious mental disorder, if the disorder was a factor in an offence that he or she committed and if the treatment is expected to reduce the risk of further offences being committed in which the prisoner's disorder is a factor. The inpatient treatment is provided either in an appropriate psychiatric institution, such as a psychiatric hospital, or in a therapeutic institution for convicted prisoners (Criminal Code, art. 59 (2)). If there is a risk of the offender absconding or committing further offences, the treatment may be provided in a secure institution or even in a closed prison provided that the required treatment is administered by specialist staff (Criminal Code, art. 59 (3)). A person with a serious mental illness may also be incarcerated indefinitely (Criminal Code, art. 64) if inpatient treatment ordered under article 59 of the Criminal Code offers no prospect of success. In this case, the person also receives psychiatric care if necessary (Criminal Code, art. 64 (4)).

107. In practice, many persons subject to a measure under article 59 of the Criminal Code are placed in forensic clinics (for example, Rheinau in Zurich) or in specialized institutions for convicted prisoners (for example, Massnahmenzentrum Bitzi in Sankt Gallen and Curabilis in Geneva). It should be noted that, in response to criticism about the lack of appropriate institutions, several plans to enlarge forensic clinics and institutions able to accommodate persons serving sentences are under consideration, including projects at the facilities in Rheinau in Zurich, Wil in Sankt Gallen, Königsfelden in Aargau, Realta in Graubünden and Basel. As regards the closed sections of facilities for convicted prisoners (under article 59 (3) of the Criminal Code), there are plans to create additional capacity at Cery in Vaud, Curabilis in Geneva and in Valais (as part of the Vision 2030 project). In total, 184 places should be created. With the 272 existing places, once these projects are completed Switzerland will have more than 400 places reserved exclusively for the needs of persons with mental disorders.

108. While serving a custodial sentence, a detainee has the same rights as any other patient except for the right to a free choice of doctor. For example, institutions have an obligation to arrange for the psychiatric care of detainees and to find appropriate solutions in those cases where psychiatric hospitalization proves necessary. In particular, they are advised to ensure that care is provided by specialized staff trained specifically in psychiatry or psychotherapy. Accordingly, cantons are increasingly employing medical staff specialized in psychiatry to work in their prisons. In addition, several prisons have established specialized units to accommodate persons with psychological disorders, such as the eight-bed psychiatric unit at Plaine de l'Orbe in Vaud and the forensic psychiatry section (*Forensisch-Psychiatrische Abteilung*) at Pöschwies prison in Zurich.

109. Regarding measures taken to allow for the possibility of a review of life imprisonment, it is important to remember that life incarceration pursuant to article 64 (1 bis) of the Criminal Code may be ordered only subject to very strict conditions. Thus, since this provision entered into force on 1 August 2008, only one person has been sentenced to life imprisonment. It should also be noted that the Federal Supreme Court has quashed all life sentences brought before it to date.

110. Swiss law unequivocally provides that persons sentenced to life imprisonment under article 64 (1 bis) of the Criminal Code have the right to request a review of the decision. The conditions for release from life imprisonment are set out in article 64c of the Criminal Code. In line with this provision, the competent authority considers ex officio or on application whether there are any new scientific findings that create an expectation that the offender may be treated so that he or she no longer poses a risk to the public. The authority makes its decision on the basis of a report from the Federal Commission for the Assessment of the Treatability of Offenders subject to Lifelong Incarceration. This independent commission consists of 10 forensic psychiatry specialists from different regions of Switzerland. Its role is to assist the cantonal authorities in assessing the possibility of successfully treating persons incarcerated for life.

Reply to the questions raised in paragraph 20

111. As a preliminary remark, it is important to clarify that article 78 of the Criminal Code provides for solitary confinement in the form of uninterrupted isolation from other prisoners in three instances: for a period of up to one week at the beginning of a sentence to prepare for its execution; to protect a prisoner or third parties; or as a disciplinary measure (also referred to as “arrest” in this case). In the paragraphs that follow, reference is made only to this last form of solitary confinement, i.e. that ordered as a disciplinary measure.

112. The vast majority of the cantons base their disciplinary measures, including arrests, on cantonal law and relevant directives of the concordats on the enforcement of sentences.

113. Depending on the canton, the maximum duration of disciplinary confinement ranges from 10 to 20 days. However, a 20-day arrest is very rarely ordered (for example, in Schaffhausen, no such arrest has been ordered for the last 18 years). Only two cantons have a maximum duration of 30 days (Vaud and Neuchâtel). However, the disciplinary regulations of the canton of Vaud will soon be amended and the maximum duration of disciplinary confinement reduced. The authorities in Neuchâtel, meanwhile, state that, for more than 10 years, arrests lasting 30 days have been ordered only very rarely.

114. With regard to the medical care of persons in solitary confinement, all the cantons that have submitted information on the matter have stressed that it is always provided.

115. Cantonal provisions provide for the possibility of interrupting confinement owing to health problems and also the possibility of transferring the person concerned to a clinic. Some cantons mention actual cases of interruption of disciplinary confinement.

116. The cantons also confirm that the daily hour of outdoor exercise required by the Convention is guaranteed everywhere. They also indicate that confinement is ordered only with immense caution, if at all, in the case of minors or persons suffering from psychosocial disorders (and that there is a strict separation of minors and adults, support provided by social workers, chaplains, etc.). The possibilities for communication with others vary from canton to canton.

117. The average duration of solitary confinement as a disciplinary measure in Switzerland as a whole was 4.85 days in 2015, 4.35 days in 2016 and 4.83 days in 2017.

118. The cantons base their disciplinary procedures on relevant legal texts (in particular, on the cantonal legal framework for administrative justice and on the Criminal Procedure Code). According to the cantons, general procedural guarantees are ensured in all cases. Detainees always receive a hearing (right to be heard). Summonses to appear as witnesses (e.g. for other detainees) are issued in most cantons depending on the situation, if necessary and appropriate.

119. Provision is also made for detainees to be able to cross-examine incriminating evidence.

120. Decisions to order disciplinary measures are subject to appeal and may, if necessary and appropriate, be accompanied by a statement of the reasons on which they are based.

121. Some of the cantons report that they do not keep a central register of disciplinary sanctions. The usefulness and added value of such a register are disputed in the canton of Zürich. Generally, disciplinary sanctions are recorded in a prisoner’s file. Most of the cantons indicate that they do record their disciplinary sanctions in some form of register (often limited to a single institution or canton).

Reply to the questions raised in paragraph 21

122. In total, there were 24 deaths in custody in Switzerland in 2015, including 10 suicides. In 2016, there were 17 deaths, including 5 suicides. More detailed statistics, disaggregated by canton, can be found in annex 6.

123. A prisoner of German nationality died in the canton of Zürich. He had been receiving medical treatment from the prison doctor in charge of his care and had to be transferred to hospital, where he died. The case will apparently be the subject of a criminal investigation for possible negligence. The other cantons have not recorded any deaths due to negligence or acts of violence.

124. The cantons also recorded very few injuries in custody, and the vast majority of them were caused by fellow inmates. There were only two recorded instances of injury resulting from an act performed by a prison employee, in Aargau and Ticino. The few cases reported are listed in annex 7, broken down by canton, insofar as statistics on this subject are available.

125. Acts of inter-prisoner violence have generally resulted in disciplinary sanctions and, where appropriate, criminal convictions.

126. In the case of the injury inflicted by a prison employee on a detainee in Aargau, criminal proceedings remain pending. The above-mentioned incident in Ticino has had criminal and disciplinary consequences for the employees concerned.

127. As each canton takes the measures it deems necessary to combat the problem of inter-prisoner violence, to improve surveillance and the identification of at-risk prisoners and to prevent suicides, the measures taken are very varied. Nevertheless, it is possible to single out the main measures taken by the cantons, namely: offering psychotherapeutic or social care to detainees who express a need for it; providing regular and specialized in-service training to staff whose work involves sentence enforcement;²⁹ conducting observations/assessments of the risk of self-harm and harm to others presented by detainees when they are taken into custody and while serving their sentences; ensuring regular contact between prison staff, external parties working in the prison environment (nurses, social workers, etc.) and detainees, for both medical and social purposes; guaranteeing a rigorous exchange of information among all stakeholders; providing interdisciplinary care; combating drug use; increasing the availability of training, work and leisure activities in prisons; raising staff awareness of the issue of suicide, etc.

Articles 12 and 13

Reply to the questions raised in paragraph 22

128. Under the Swiss federal system, it is the cantons that have primary responsibility for processing complaints against the police. They are free to define the procedures that they deem appropriate within their remit provided that such procedures are compatible with federal law and international law. The investigation of criminal complaints against the police is, however, broadly regulated by the Swiss Criminal Procedure Code, which was enacted at the federal level and has been in force since 1 January 2011. The Code guarantees that such complaints are dealt with by an independent criminal justice authority.

129. The case law of the Federal Supreme Court has confirmed that any person who makes an arguable claim of inhuman or degrading treatment by a police officer is entitled to an effective and thorough official investigation.³⁰ However, the Court has refrained from giving an authoritative decision on the need to establish specific redress mechanisms for incidents involving the police.³¹

130. The Swiss judiciary is independent at all levels of government. Many cantons are therefore of the view that it is not useful to establish additional mechanisms to deal with complaints against the police. The Public Prosecutor's Office is responsible for prosecuting

²⁹ See the reply to paragraph 13.

³⁰ ATF 131 I 455; ATF 138 IV 86.

³¹ See, for example, the Federal Supreme Court judgment of 24 November 2011 (1B_471/2011).

offences committed by police officers. More broadly, complaints relating to the conduct of police officers are handled by the oversight authority through an administrative procedure.

131. The reasons for not introducing specific mechanisms are, in particular, the following: the criminal prosecution authorities are independent (Criminal Procedure Code, art. 4); they are subject to the principle of ex officio investigation (Criminal Procedure Code, art. 6); they are required to initiate and conduct proceedings without delay when they become aware or have grounds for suspecting that an offence have been committed (Criminal Procedure Code, arts. 5 and 7); in addition, the injured party may apply to the director of proceedings for the recusal of a person acting for a criminal justice authority if there are grounds to suspect that he or she may not be impartial (Criminal Procedure Code, arts. 56 et seq.); if the request for recusal is opposed, it is referred to the Public Prosecutor's Office for a final decision if the matter relates to the police (Criminal Procedure Code, art. 59 (1) (a)); the injured party may file his or her complaints with the Public Prosecutor's Office directly (Criminal Procedure Code, art. 301); reports do not therefore have to be made through the police; the criminal justice authorities, including police officers, are required to report any offences that come to light in the course of their official activities to the competent authorities (Criminal Procedure Code, art. 302); the parties may appeal against decisions and procedural acts of the police and the Public Prosecutor's Office (Criminal Procedure Code, art. 393).

132. In order to strengthen these guarantees, some cantons have adopted additional measures, such as stipulating that hearings may be conducted only by representatives of the Public Prosecutor's Office, by an officer of a police force not involved in the case or, as in Geneva, by a special police unit dedicated to cases of this kind (the Inspectorate General of Services).

133. Certain other cantons have established alternative mechanisms to those envisaged under the Criminal Procedure Code for managing complaints against police officers. For example, the cantons of Zürich, Vaud, Basel-Stadt, Basel-Landschaft and Zug have an ombudsman's office. Similarly, in the cities of Bern, Lucerne, St. Gallen, Rapperswil-Jona, Wallisellen, Winterthur and Zürich, there are municipal ombudsman's services.

Reply to the questions raised in paragraph 23

134. In terms of statistics on the number of complaints filed and police reports issued regarding offences allegedly committed by police officers, since 2015, the canton of Solothurn has recorded nine complaints of abuse of authority, bodily harm, insult and discrimination. These cases do not in any way amount to torture or serious or inhuman ill-treatment. No proceedings have been initiated in relation to acts of torture or acts amounting to torture.

135. In St. Gallen, 34 complaints were made against the police concerning disproportionate use of force or ill-treatment. Of these incidents, three took place in a prison and one occurred during an arrest following an escape. Criminal proceedings were initiated in two of these four cases (victim 1: Eritrean, 15 years old, female/victim 2: Italian, 15 years old, male). Both cases were subsequently dismissed.

136. Aargau reported one case of abuse of authority in 2016. The complaint, filed by a person from the Dominican Republic, was investigated by the Public Prosecutor's Office.

137. In Thurgau, in 2015, a complaint of abuse of authority, trespass on domestic premises and bodily harm was made by a Swiss man and a German woman against two policemen and a policewoman. The complaint was forwarded to the Prosecutor General by the cantonal police and was dismissed in November 2016. In the light of this decision, no disciplinary action was taken.

138. Finally, as far as the other cantons are concerned, either they have no cases to mention or they have no data on such cases.

139. Under the federalist structure of Switzerland, the working relationship between police officers and the cantons is regulated by cantonal laws (in particular, laws on personnel and laws governing the police). These laws provide for a wide range of disciplinary sanctions in the event of serious or repeated breaches of duty.

140. A police officer who is accused of acts of ill-treatment may, depending on the seriousness of the acts, receive a verbal warning, be reprimanded in writing, have his or her salary reduced, be provisionally suspended, be reassigned (provisionally or not) or, finally, be dismissed (released from his or her duties). One canton expressly provides that an employee may be provisionally suspended if criminal proceedings are instituted against him or her in connection with an offence, whether serious or otherwise.³² Some cantons also levy fines in punishment for breaches of service obligations.³³

141. However, no canton systematically suspends or reassigns officers suspected of having engaged in torture or ill-treatment. Administrative laws give the competent authorities (more or less) broad discretionary powers, so that they may best adapt the punishment to the misconduct committed by the employee. Each case must therefore be assessed individually. Furthermore, it is important to stress that an officer accused of ill-treatment is presumed innocent and that systematic suspension could raise issues of compatibility with this fundamental principle. The police in the canton of Solothurn publish an annual report on the measures they have taken (data on persons with a high potential for violence, observations, use of instruments to record images or sounds during demonstrations for evidentiary purposes, secret investigations). In addition, various measures have been adopted to ensure that the police do not abuse their monopoly over law enforcement. These include, in particular, in-service training, advanced training courses, and activities to raise awareness of “racial profiling”, which is expressly prohibited.

142. Almost all the cantonal authorities responsible for the enforcement of sentences and execution of measures have no reports of ill-treatment by a doctor who has examined a person deprived of his or her liberty.

143. In the canton of Solothurn, an investigation was opened on the basis of a medical report noting bruises following an arrest. The investigation, which was conducted independently and impartially, concluded that the behaviour of the police officers in question had been appropriate and proportionate. The outcome was communicated to the parties and the doctor and was not contested.

Reply to the questions raised in paragraph 24

144. The Inspectorate General of Services conducted two investigations against police officers belonging to the Drugs Task Force in 2014, five in 2015, four in 2016 and four in 2017. No investigations have been opened to date in 2018.³⁴

145. With regard to the number of such investigations that have led to prosecutions, it should be noted that the term “prosecution” is not appropriate. The term “proceedings” should be used.

146. At the end of each of its investigations, the Inspectorate General of Services prepares a report for the Attorney General. This means that proceedings are initiated in 100 per cent of cases. It is then for the Attorney General to decide whether or not to prosecute the case. The Inspectorate General of Services does not have the power to decide not to report a case. All investigations therefore have one of three outcomes: a conviction, a no-proceedings order or a dismissal order.

147. Most of the cases handled by the Inspectorate General of Services to date have resulted in either a dismissal or a no-proceedings order. Thus, the employees concerned were not disciplined.

148. There is still one case from 2014 to be tried before the Police Court and there are a few cases from 2017 still pending before the Public Prosecutor’s Office.

149. As it stands, only one case, dating from 2017, has resulted in an administrative penalty imposed by the Chief of Police, in early 2018.

³² Article 29 (1) of the Act on the Working Relationships of State Employees of Zürich (LS 177.10).

³³ The cantons of Fribourg and Valais, for example.

³⁴ As at 4 May 2018.

Article 14

Reply to the questions raised in paragraph 25

150. Since the perpetrators are public officials, the Federal Act on the Liability of the Confederation, the Members of its Authorities and its Officials is applicable at the federal level. It provides that the Confederation is liable for unjustified harm caused to third parties by an official in the exercise of his or her duties, regardless of whether the official is at fault (art. 3). Compensation by way of moral damages may also be awarded to the victim in the event of misconduct (art. 6). The injured party must submit his or her claim for damages or compensation to the Federal Department of Finance (art. 20). Cantonal laws on the liability of public officials establish a similar regime (strict liability of the State for the acts of its officials).

151. In the alternative, the Federal Victim Support Act provides that, subject to certain conditions, any person who has suffered a direct violation of his or her physical, psychological or sexual integrity as a result of an offence (i.e. anyone who is a victim of crime) is entitled to the support provided for in the Act. Relatives of victims may also obtain support (Federal Victim Support Act, art. 1). Victims of ill-treatment by law enforcement officials may benefit from this support if they meet the conditions set out in the Act. The support may consist of, inter alia, compensation and/or moral damages for the harm suffered by victims (Federal Victim Support Act, arts. 19 et seq.). The statistics on victim support in Switzerland give the number of cases in which compensation and/or moral damages have been granted but do not specify whether these were cases of ill-treatment by law enforcement officials.

152. Court decisions are not systematically recorded at the federal level either. However, all cantonal second-instance judgments handed down since 2010 in application of the Federal Victim Support Act have been reviewed. As far as the Government is aware, two of the judgments delivered since 2015 concerned ill-treatment by law enforcement officials. The moral damages awarded amounted to 500 Swiss francs in the first case and 700 Swiss francs in the second.

153. In accordance with the Act and the conditions laid down therein (particularly those concerning its subsidiary nature contained in art. 4), consultation centres provide immediate assistance to the victim and his or her relatives to meet the most urgent needs arising from the offence (immediate assistance, art. 13 (1)). If necessary, they provide additional assistance to the victim and his or her relatives until the state of health of the person concerned has stabilized and the other consequences of the offence have been, as far as possible, eliminated or mitigated by compensation (long-term assistance, art. 13 (2)). Such assistance may be provided by the centres through third parties (art. 13 (3)). The services provided include the appropriate medical, psychological, social, material and legal assistance needed by the victim or his or her relatives as a result of the offence. If necessary, the centres provide emergency accommodation for the victim or his or her relatives (art. 14 (1)).

154. Owing to the federalist structure of Switzerland, and since many actors are likely to be involved in the compensation process, it is not possible to provide more precise statistical data on the amounts and the assistance allocated to victims of ill-treatment by law enforcement officials.

Article 16

Reply to the questions raised in paragraph 26

155. When repatriations to Morocco are carried out by boat, as is sometimes the case, observers from the National Commission for the Prevention of Torture are present during the transfer to France by special flight as part of the observation of removals provided for in the law on foreign nationals. However, no provision is currently made for observers to be present during the journey from France to Morocco. If repatriations by boat were to increase, the State Secretariat for Migration would consider whether observers should be present.

156. According to the legal bases in force (Ordinance on the Enforcement of the Return or Deportation of Foreign Nationals, art. 15f to 15i), the presence of observers is limited to repatriations by air. In this connection, it should be noted that article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment allows for visits by national preventive mechanisms only in the case of places under the jurisdiction and control of the State concerned where persons are or may be deprived of their liberty.

157. With the entry into force of the Act of 20 March 2008 on the use of force and police measures in areas under the jurisdiction of the Confederation and the Order of 12 November 2008 on the use of force and police measures in areas under the jurisdiction of the Confederation, uniform legal bases were established on 1 January 2009. The use of restraints is always subject to the principle of proportionality and to the specific circumstances of a case, in particular the behaviour of the person concerned. The use of force and police measures must be consistent with the circumstances and, in particular, take account of the age, sex and state of health of the person concerned.

158. The Federal Department of Justice and Police has prepared a manual dealing, in particular, with repatriations of asylum seekers and foreigners for the use of the agencies responsible for carrying out the repatriations. The manual serves as a practical guide and as a basis for training. It is also intended to encourage uniform practice in repatriations throughout Switzerland. The manual was updated on 1 January 2017.

159. Mention should also be made of the observation of special flights pursuant to the law on foreign nationals. The National Commission for the Prevention of Torture, which has been entrusted with this task since July 2012, monitors the behaviour of police officers accompanying returnees. The Commission's observers can communicate their criticisms and remarks to the relevant team leader. The Commission's findings and recommendations are also discussed regularly in an ongoing dialogue with the authorities and, once a year, in a forum involving civil society organizations. The Commission also publishes an annual report on the presence of observers during repatriations pursuant to the law on foreign nationals. The recommendations contained in the report are examined by the Expert Committee on Returns and the Enforcement of Removals, which is composed of representatives of the Confederation and the cantons, and are implemented if necessary. The Committee's opinion on the report is also published.

160. Since 1 January 2016, no further special flights have been classified as high-risk flights. The series of measures adopted by the Conference of Cantonal Justice and Police Directors in the spring of 2010 to optimize special flights, which contained a provision on this subject, has been abandoned in order to bring the processes and restraints used during special flights into line with European Border and Coast Guard Agency regulations. The obligation to shackle returnees on high-risk flights and the systematic use of partial immobilization on flights have been abandoned.

161. Regarding the case of Joseph Ndukaku Chiakwa, the following points should be made. Joseph Ndukaku Chiakwa died on 17 March 2010 during preparations for a special flight. The proceedings conducted by the Winterthur/Unterland Public Prosecutor's Office in relation to this death were suspended by decision of 12 January 2012. Two medical reports were commissioned as part of the investigation. Both concluded that Joseph Ndukaku Chiakwa's death was due to natural internal causes. The Winterthur/Unterland Public Prosecutor's Office concluded, on the basis of these and other examinations, that there was no evidence of criminal misconduct by third parties and therefore issued an order of dismissal. The victim's family members have appealed against the decision of 12 January 2012 to the Zürich Supreme Cantonal Court.

162. In December 2013, the proceedings were reopened by decision of the Zürich Supreme Cantonal Court. Public Prosecutor's Office No. I was instructed to carry out the necessary further investigations. On 28 March 2018, following these investigations, it issued a new order of dismissal on the grounds that no suspicions could be sufficiently substantiated. This order was not contested and therefore entered into force.

Reply to the questions raised in paragraph 27

163. The following paragraphs contain a summary of the measures taken to guarantee respect for the physical integrity and autonomy of intersex persons. The National Advisory

Commission on Biomedical Ethics, under a mandate from the Federal Council, has considered the problems associated with intersex persons and has published a position paper containing several recommendations. Some of these recommendations are very concrete and target specific actors, including the Confederation. Most of the recommendations that concern the Confederation have been, or are in the process of being, implemented.

164. With regard to medical and surgical treatment, the Federal Council considers that current practice respects the rights of intersex persons.³⁵ Moreover, premature or unnecessary interventions are contrary to law governing physical integrity. To the extent possible, a child must be old enough to be able to make a decision when proposed treatments have irreversible consequences.

165. According to experts, the current framework ensures that the best interests of the child take precedence over all medical interventions and treatments.

166. From a legal standpoint, the general rights of patients apply to the treatment of the intersex children and adults concerned, who thus have the right to receive medical treatment and care based on current medical science and practice, the right to information and consent, and the right to the protection of their personal data. In this regard, it is important to cite the statement of the Central Ethics Committee of the Swiss Academy of Medical Sciences of December 2016:

“The support provided to the families concerned has been improved in Switzerland and the recommendations of the National Advisory Commission on Biomedical Ethics as well as international standards are respected as far as possible. In principle, parents who find themselves in this difficult situation are now advised and supported by an interdisciplinary team from birth. All decisions regarding treatment and interventions must be made with the child’s well-being in mind and with a sense of shared decision-making.”

167. The Swiss social welfare system offers appropriate support for intersex persons. Under Swiss law, intersexuality is a congenital disorder, which is defined as “an illness present at the birth of the child” (Federal Act on the General Aspects of Social Security Law, art. 3 (2)). As with all other conditions included in the list of congenital disorders, the right to medical treatment under the disability insurance scheme lapses at the end of the month in which the insured person turns 20 years of age. Thereafter, health insurance covers the costs of treatment, just as it would in the event of illness. In other words, compulsory health insurance replaces the disability insurance.

168. It is also important to mention the preliminary draft amendment to the Swiss Civil Code on the change of legal gender, although this measure is not specifically designed to guarantee respect for the physical integrity and autonomy of intersex persons.

169. According to the law in force, in cases of intersexuality, an amendment to the sex recorded in the civil register should in principle be ordered by a judge at the request of the parents or of the child him or herself (Civil Code, art. 24 (1)). The cantonal authorities responsible for overseeing civil status may also make a request to the judge (Civil Code, art. 24 (2)). The decision will then be recorded in the civil register and the reference to the sex will be changed. The draft amendment is intended to simplify the procedure for recording a sex change in the civil register and, by extension, for changing the given names of transgender and intersex persons by replacing the current procedures with a declaration made before the civil registrar, without any requirement for a medical intervention or other preconditions. The consultation procedure ended on 30 September 2018. The evaluation of the positions adopted is ongoing.

Reply to the questions raised in paragraph 28

170. Most of the cantons have taken the measures needed to implement the provisions of the Convention and follow up on the Committee’s recommendations. Particular emphasis

³⁵ See, in particular, the press release of 6 July 2016: “Persons with ambiguous sexual characteristics: raising awareness” (available in French, German and Italian on www.admin.ch > Documentation > Press releases > 6 July 2016) (accessed on 11 December 2018).

has been placed on the development of legal bases and the implementation of construction projects. The projects described below deserve a special mention.

171. The subdivision of prisons in the canton of Zürich into pretrial detention and post-conviction facilities in 2014 has made it possible to consistently comply with the obligation to reserve the former facilities for pretrial detention in line with article 234 (1) of the Criminal Procedure Code. Security and prisoner care have been improved in all prisons through staff increases (i.e. use of double night shifts, expansion of social and medical services in all prisons).

172. In pretrial detention facilities in Zürich, efforts are being made to improve conditions of detention by promoting more social interaction both inside prisons and with the outside world (two-phase model). There are also plans to open a crisis intervention ward in one of the prisons in 2019 in order to improve suicide prevention. In Dielsdorf prison, in the canton of Zürich, a special ward exclusively for women has been established for serving short-term sentences. In post-conviction facilities in Zürich, which are now reserved solely for prisoners serving sentences, standards have been developed for the enforcement of short-term custodial sentences and the availability of training has been increased.

173. The Office for Judicial Enforcement of the canton of Bern is committed to meeting the expectations of the Committee, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the National Commission for the Prevention of Torture. Indeed, it was in response to recommendations from the European Committee that the canton completely revised its law on judicial enforcement (RSB 341.1) and its order on judicial enforcement (RSB 341.11). The revision gives coherent effect to the fundamental notion that the principles governing the status of detainees and acts constituting serious violations thereof should be enshrined in the law and in the implementing provisions, contained in the order. A three-year part-time (50 per cent) post has been created for this purpose. In order to meet growing demands in the area of sentence enforcement, the head of the Department of Police and Military Affairs tasked the Office with carrying out a reorganization in 2016 and with devising a strategy in 2017. The 2015–2032 judicial enforcement strategy of the canton of Bern has now been developed and serves as a basis for, inter alia, updating procedures for the enforcement of sentences and measures and continuously adapting them to the constantly changing conditions. In addition to the need to renovate and modernize existing infrastructure, the Office has identified five priorities for action (such as harmonizing judicial enforcement practices, adopting a risk-based approach and treating staff as a key resource) that will have a major influence on the quality of sentence enforcement in the canton of Bern. The harmonization of judicial enforcement practices will involve, inter alia, standardizing staff training and skills development programmes and applying common standards throughout Switzerland in the context of an offence- and risk-based approach. Thus, the Office intends to pursue a risk-based approach at all levels with the aim of reducing recidivism, increasing quality and efficiency in the area of enforcement and improving collaboration with all relevant services. The priority for action concerning staff reflects the fact that the demands placed on staff have steadily increased and have also become more complex (particularly owing to an increase in the number of people with mental and physical disorders and the existence of ethnicity and nationality-related differences). The Office is therefore striving to give staff the capacity to meet these demands (through training and advanced training) and is aiming to achieve an appropriate ratio between the number of prison places and the number of full-time officer posts, in accordance with the recommendations of the Federal Office of Justice.

174. The canton of Lucerne has taken the following measures: adoption of the Act of 14 September 2015 on Judicial Enforcement (SRL No. 305); adoption of the Order of 24 March 2016 on Judicial Enforcement (SRL No. 327); introduction of a risk-based case management system for sentence enforcement (Risikoorientierter Sanktionenvollzug) in the cantons covered by the concordat of north-western and central Switzerland on the enforcement of sentences and measures. The aim is to achieve a comprehensive harmonization of case management in the area of the enforcement of sentences and measures in German-speaking Switzerland (uniform methodology, common case definitions, common language, etc.).

175. In the canton of Glarus, the most recent revision of the Prisons Ordinance entered into force on 1 September 2014. The legal aspects criticized by the National Commission for the Prevention of Torture have largely been taken into account.

176. In 2016, the canton of Fribourg revised all its legislation in the field of the enforcement of criminal penalties. The revision entered into force on 1 January 2018.

177. In the canton of Basel-Stadt, the Commission has visited both the pretrial detention facility and Bässlergut prison. Many of its recommendations have been implemented.

178. The authorities in Schaffhausen report that the prison infrastructure only partially meets current requirements and standards, and that for this reason the Cantonal Council has started planning work for a new police and security centre. The vote on the implementation of the project took place on 10 June 2018. The people of Schaffhausen gave their approval for the construction of the new centre.

179. In the canton of St. Gallen, a third amendment to the Ordinance on Prisons and Post-Conviction Facilities has brought clarification on, for example, prisoner body searches (if a prisoner has to undress, he or she does so away from other prisoners and in two stages), the provision of information to prisoners on admission (prisoners must be interviewed on arrival to clarify their personal situation and concerns, and, if necessary, the medical and social assistance that they need) and medication (the possession and consumption of medication not prescribed or authorized by the prison doctor are prohibited. Medication may be provided only on prescription and in accordance with the instructions of the prison doctor. Medication must be taken under supervision unless the prison doctor has decided otherwise. The prison management must ensure that the supply of medication to prisoners can be traced at all times. When a prisoner refuses to take medication, the prison doctor must inform him or her of the risks that he or she is taking. If he or she continues to refuse, his or her wish will be respected as long as it can be assumed that he or she has free will and is capable of forming an opinion. However, the foregoing provisions are without prejudice to the provision made for forced treatment in article 61 (2) of the Cantonal Act of 3 August 2010 establishing the Criminal Procedure Code and Criminal Procedure Applicable to Minors). The Ordinance also deals with surveillance. It provides that solitary confinement and security cells may be monitored using a surveillance device, that such surveillance must be visible, that the detainee must be informed and that his or her privacy must be adequately protected.

180. The canton of St. Gallen is in the process of renovating its prison infrastructure. As a first step, Altstätten regional prison will be expanded from 45 to 126 places and will have appropriate areas for activities, sports, leisure and social interaction in housing units. This extension will make it possible to close four small prisons and improve the quality of the care provided. The cantonal legislature agreed the building loan with 114 votes in favour and none against, thus demonstrating its awareness of the need to increase staffing levels. Citizens approved the loan in a vote on 25 November 2018.

181. Planning work for the replacement of the two prisons in the city of St. Gallen, which are housed in historic buildings, has begun. The construction of a 16-bed forensic ward is planned in the psychiatric clinic in Will. The cantonal legislature agreed the building loan with 108 votes in favour, none against and five abstentions. No vote is required in this case. The ward will significantly improve the accommodation, care and treatment of prisoners with psychological disorders.

182. In the juvenile detention facility in Aarburg, the approach taken, including the disciplinary regulations, has been completely redesigned and adapted to the new legal conditions (particularly in the area of accommodation providing care under civil law).

183. The authorities in the canton of Ticino provided the following information: in April 2018, the Cantonal Council approved a new organizational model for the management of prison medicine in cantonal prisons. A special service facility, to be managed by the Ente Ospedaliero Cantonale (Cantonal Hospital Authority), was to be created with the support of the Cantonal Socio-Psychiatric Organization. The new organizational model, which was to be introduced gradually in the course of 2018, provides, in particular, for the permanent presence of a doctor, who will act as head of the prison medical service and coordinate activities. The service facility will comprise a somatic service, provided with the support of the Cantonal Hospital Authority, and a psychiatric service, provided in conjunction with the Cantonal Socio-Psychiatric Organization, and will be supported by a nursing service that will in turn be able to draw on the assistance of specialized detention officers. Cantonal prison staffing was increased by 13 posts in November 2017, with 11.5 of them in place as of 2018 and 1.5 as of 2020. Significant organizational progress has been made: the adoption

of the AGITI/Juris information technology application has been finalized, which will enable the cantonal prisons to manage accounting and prison population processes more effectively. Regarding inmates with psychiatric disorders, whether or not aggressive, studies are under way to assess the feasibility of building units reserved for inmates with psychiatric disorders and dangerous inmates within cantonal prison facilities. Also under consideration is the possibility of using an existing facility in Torricella to house women while either the cantonal prison is restructured or a new building is constructed for the prison, within which a specific ward will be created. In 2017, the authorities in the canton of Ticino changed the technology employed for electronic surveillance from a radio frequency home monitoring system to mobile and GPS monitoring. The canton of Ticino had been selected as the pilot canton for electronic surveillance.

184. The authorities in Valais mention the following key measures: increase in prison staff; closure of Martigny prison; improvements to the centre for the enforcement of the Act on Coercive Measures in Granges (renovation of cells, change of furniture, creation of a sports and leisure room, increase in leisure time, etc.); creation of the Advisory Commission on the Act on Coercive Measures to determine the improvements to be made to the aforementioned centre.

185. Since 2014, the Neuchâtel prison service has been engaged in the work to reform the area of criminal penalties enforcement provided for in the action plan adopted by the Grand Council of Neuchâtel in September 2013. Renovation and expansion work on the canton's two prisons have been completed and the facilities are meeting detainees' care needs. Institutional designs have also been finalized. Cantonal law was revised on 1 January 2018 and implementing regulations are being adapted to meet higher standards. Emphasis continues to be placed on cooperation with the various actors in the criminal justice system and with partners from the prison system, particularly in the areas of social, medical and religious support. A code of ethics governs the work of all prison staff members.
