

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Switzerland

ECRI wishes to point out that the analysis contained in its third report on Switzerland, is dated 27 June 2003, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Switzerland was subject to a confidential dialogue with the Swiss authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Swiss authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

ECRI - Third report on Switzerland (2003)

Position of the Swiss Government

In accordance with ECRI's country-by-country procedure, the national liaison officer appointed by the Swiss authorities was able to have confidential discussions with ECRI. A detailed analysis of the draft text on Switzerland made it possible to pinpoint a number of inaccuracies in the way problems were perceived. Unfortunately, only a small proportion of the corrections and additions suggested was taken into account. We therefore consider it important to set out the Swiss Government's position on a few points in the report explicitly.

“Police” (paragraphs 28-36) and “Racism and discrimination against black Africans in Switzerland” (paragraphs 88-93)

We reject the assertion underpinning the report to the effect that the Swiss police behave in a racist, discriminatory and violent way towards minorities, in particular black Africans.

The criticisms are often very general, with no substance to them, and without foundation, and concern cases which have not been examined in detail by the commission responsible for preparing the report. The cantonal police only arrest people involved in drug trafficking, including black Africans, when there are well-founded suspicions. All the procedures take place in accordance with the relevant statutory provisions. Measures are not, under any circumstances, taken arbitrarily and police practices are not geared primarily to asylum seekers and black Africans or clearly designed to exclude them, keep them away from certain areas or humiliate them. The “constraint measures” mentioned in the draft report (see paragraphs 30 and 31), the Rayonverbot (the practice of closing off certain areas to specific groups), forcible deportation, stays in detention centres for people awaiting deportation, and so on are the result of a decision by a court or the authorities and are based on the legislation in force. The relevant civil servants' decisions are documented, open and verifiable. A complaint may be lodged against any decision. The same is true of the way the airport police deal with potential asylum seekers, which was criticised in the report. The procedures and time limits applied are likewise based on the relevant legislation.

The police are well aware that, given the numerous police operations carried out round the clock every day, mistakes may sometimes occur. But such issues as xenophobia and police violence are systematically covered during basic and in-service police training. They are dealt with in detail and with due diligence in the initial and further training courses for the cantonal police. In certain cantons, special efforts have been made to ensure that police officers are better prepared to deal with the difficult situations with which they are increasingly confronted in the performance of their duties.

Paragraph 48

Even though there are a few Roma/gypsy families, by far the majority of Swiss travellers belong to the Jenisch, a native community. It should be pointed out that Jenisch is a sociolect with a German grammatical structure. Swiss travellers use the language only among themselves and do not generally want people outside their group to master it. No attempt is therefore made to teach Jenisch in schools. Priority is currently given to the preparation of teaching aids - if possible in the form of games - designed to help travellers' children learn Jenisch within their families.

As for the children's schooling, it should be pointed out that travellers do not all hold the same views on the subject. By and large, their representatives are satisfied with the existing situation, which allows children to accompany their travelling parents during

the summer while being supervised and having their progress monitored from a distance by teachers.

Paragraph 56

We cannot accept the assertion that the Federal Office for Refugees presents statistics comparing the situation with that in other countries in such a way as to give “a false picture of the situation”. In fact, practices for recording asylum statistics differ from one host country to another, which makes international comparisons difficult. Accordingly, the Office prefers to describe the various methods used to produce its figures clearly and openly rather than simply refraining from all international comparisons.

Situation of non-citizens residing in Switzerland (paragraphs 94, 98 and 99)

In 1998 the Federal Council issued an order replacing the much-criticised “three-circle” policy with a “binary admission policy”. The new Foreigners Bill provides that this policy should in future be enshrined in law. As a result of the entry into force, on 1 June 2002, of the agreement on the free movement of persons between Switzerland and the EU countries, the admission of labour from other countries is, as a rule, confined to persons with qualifications lacking on the Swiss and European markets. Exceptions are possible in the case of family reunion or training visits or on serious humanitarian grounds. These exceptions account for the bulk of annual admissions (some 65,000 people in 2002, accounting for 63% of total immigration). The agreement on the free movement of persons is part of a vast system of agreements obliging all signatory states to accept, as a priority, nationals of the signatory countries and to treat them in the same way as their own nationals. Neither the Constitution nor public international law obliges the authorities to extend these mutual contractual obligations to nationals of countries with which Switzerland has not signed an agreement and is not bound by the principle of reciprocity. The instructions concerning admission are applicable in the same way to all nationals of third countries, regardless of their nationality.

The criticisms levelled are not backed up by experts in national law and public international law. The case law of the European Court of Human Rights (*Abulaziz, Cabales and Balkandali v United Kingdom*, Series A N° 94 paragraph 84) confirms, moreover, that states granting preferential status to their nationals and to nationals of states with which they have special relations are not committing illegitimate acts of racial discrimination. Attention is also drawn to the fact that the United Nations Committee on the Elimination of Racial Discrimination has not found fault in any way with this binary admission model.

All the EU and EFTA countries have admission and residence regulations that are far removed from the principles of the free movement of persons. In particular, there are the European Commission proposals for common regulations on the admission and residence of persons from third countries. These proposals are comparable with the new Foreigners Bill. The legal status of foreigners from a third country who are allowed into Switzerland is distinctly better under this Bill (particularly in terms of family reunion and geographical and occupational mobility) than under the Foreigners Act currently in force, notably because account has been taken of the agreement on the free movement of persons signed with the EU.

The admission of skilled labour from third countries is restricted to people with qualifications that are lacking on the labour market in Switzerland and the EU member states. The provision in question is designed to ensure a balance in the employment market and to improve its structure. Moreover, it has been proved that skilled people integrate more quickly into the labour market and society. The selection is therefore based on qualifications and not nationality. The qualifications criterion is not, however, applied in the case of family reunion and other special immigration cases (which account for the bulk of immigration every year).

Paragraph 100

Under the current regulations, the spouse's right of residence until a permanent residence permit has been granted depends on how long the couple have been married (in the case of someone married to a Swiss person) and how long they have been living together in wedlock (in the case of someone married to a foreigner). If the marriage breaks down and a return to the country of origin cannot be envisaged, because it would be too harsh a prospect, the residence permit may be extended at any time. After 5 years, the persons concerned are generally entitled to obtain a permanent residence permit (except in the case of spouses of persons with a temporary but not a permanent residence permit, in which case no decision is taken to send them back either).

The Foreigners Bill provides for substantial improvements in the legal status of foreigners allowed in from third countries in comparison with the Residence and Settlement of Foreigners Act (further to the agreement on the free movement of persons), particularly in respect of family reunion and occupational and geographical mobility. For instance, foreigners with a temporary residence permit, including students, are now entitled to family reunion. The possibility of reunion is also going to be introduced for short stays. It was decided, however, not to introduce regulations similar to those in the agreement on the free movement of persons, essentially because of the federal structure in Switzerland, the effects such a measure would have had on its demography and integration policy and, finally, the lack of reciprocity. The differences in legal status are therefore based on objective factors and hence do not constitute discrimination within the meaning of Article 8 of the Swiss Constitution (see also the comments concerning paragraph 98).

The new Foreigners Bill is therefore applicable to nationals of EU/EFTA member states and their families only secondarily, in the few cases where the agreement on the free movement of persons does not contain other provisions or when the provisions in the Bill are more favourable. Nationals of EU/EFTA member states will therefore benefit from the same integration measures as those from third countries.

Paragraph 95

Some 75% of foreigners living in Switzerland possess unlimited residence permits which are not subject to any conditions. This assures them of great legal certainty as well as complete economic freedom. The permit may be withdrawn only in exceptional cases clearly specified by law. There are effective means of appeal against all decisions concerning temporary and permanent residence permits. If the person concerned can argue his or her right to be present in the country, the appeal may even go right up to the Federal Court (in the case of a person with a temporary residence permit or one who has submitted an application for family reunion, for instance).

Paragraph 103

The binary admission system is still in force (as mentioned in connection with paragraph 97). The entry into force of the new Foreigners Act will therefore have no effect on the number of foreigners present in Switzerland illegally.

Bern, 24 November 2003