

# Switzerland

## EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

### MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries<sup>1</sup> of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.<sup>2</sup>

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<sup>1</sup> The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

<sup>2</sup> The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

### ► *Actions of security forces and effective investigations*

According to the Federal Court's established case-law, notably that of 2014, persons who claim to be victims of ill-treatment within the meaning of Article 3 ECHR have the right to complain and a specific right to a prompt and impartial investigation which should lead, when necessary, to the criminal conviction of those responsible. As regards, in particular, the Canton of Geneva, the "General Inspectorate of Services" was established in 2008 to deal with complaints against police agents.

*Dembele (74010/11)*  
Final Resolution  
CM/ResDH(2016)175

### ► *Risk of ill-treatment in case of expulsion*

The Federal Administrative Court changed its case-law in 2013, providing for additional safeguards and improved examination of asylum requests, notably as regards the risks faced including post-flight risks.

As from 2014, the Federal Migration Office suspended returns to Italy under the "Dublin II Regulation" for all asylum-seeking families with children and requested from Italy individual guarantees and detailed and reliable information about the reception facility and the physical conditions of their accommodation, as well as assurances that the family would be kept together.

*A.A. (58802/12)*  
Final Resolution  
CM/ResDH(2015)95

*Tarakhel (29217/12)*  
Final Resolution  
CM/ResDH(2015)96

### ► *Right to liberty and security*

#### ▢ Lawfulness of detention

The military penal code and the law on military penal procedure of 1980 replaced the Chief Military Prosecutor with a court having full power to reverse decisions by military commanders. Furthermore, all complaints and appeals in disciplinary cases have a suspensive effect.

*Santschi and Others (7468/76)*  
Final Resolution  
CM/ResDH(83)5

In 1991, in the Zurich Penal Code, the competence to order detention on remand was transferred from the district attorney to criminal courts.

*Huber (12794/87)*  
Final Resolution  
CM/ResDH(91)40

The 1993 revision of the Code of Criminal Procedure of the Canton of Basel-Stadt provided for the "judge of detention", thus prosecutors are no longer considered as "magistrates".

*Plumey (23857/94)*  
Final Resolution  
CM/ResDH(2001)69

Cantonal procedural codes in criminal matters were replaced by the national Swiss Criminal Procedure Code in 2011, providing for a single comprehensive legal basis for pre-trial detention and detention during trial, including an appeal procedure.

*Borer (22493/06)*  
Final Resolution  
CM/ResDH(2016)240

In 2013, the Civil Code provided for a direct right of access to a judge for persons placed in psychiatric institutions in order to challenge the measure themselves without having to wait for permission to do so from their guardian.

*Mäder (6232/09)*  
Final Resolution  
CM/ResDH(2016)182

#### ▢ Detention in view of expulsion

In 1981, the Federal Act on International Mutual Assistance in Criminal Matters abolished the impugned previous legislation and was to be strictly applied by the Federal Police Department and the Federal Court, also granting detainees the right to adversarial proceedings in view to their extradition.

*Sanchez-Reisse (9862/82)*  
Final Resolution  
CM/ResDH(87)12

### ➤ Preventive detention

In 2021, an amendment to the Code of Criminal Procedure established the necessary legal basis in the area of detention on public safety grounds in cases involving separate subsequent judicial decisions.

*I.L. (72939/16)*

Final Resolution  
CM/ResDH(2021)53

## ➤ **Functioning of justice**

### ➤ Fairness of proceedings

The 1989 Act on municipal sentences of the Canton of Vaud provided for an appeal against decisions rendered by the Police Court (or the President of the Juvenile Court in the case of minors) concerning sentences pronounced by a municipality.

*Belilos (10328/83)*

Final Resolution  
CM/ResDH(89)24

In criminal proceedings, the testimony of an undercover police agent is declared inadmissible when the defendant has not had the possibility to confront that agent.

*Lüdi (12433/86)*

Final Resolution  
CM/ResDH(92)61

A 2002 federal law regulating the profession of lawyers provided them access to a court in all cases of disputes and thus to a public hearing, including in lawyers' disciplinary proceedings.

*Hurter (53146/99)*

Final Resolution  
CM/ResDH(2015)187

In 2018, the statutory limitations in cases related to compensation claims for death or bodily injuries (including for asbestos victims) was extended to 20 years. The Foundation "Asbestos Victims Compensation Fund", created in 2017, offered asbestos victims rapid access to several types of benefits, including financial compensation.

*Howald Moor and Others (52067/10)*

Final Resolution  
CM/ResDH(2019)232

### ➤ Access to a court and public hearing

Legislation adopted in 2019 established procedural rules allowing for public hearings in disciplinary and/or ethical matters before the Court of Arbitration for Sport in Lausanne, upon an athlete's request.

*Mutu and Pechstein (40575/10+)*

Final Resolution  
CM/ResDH(2020)91

### ➤ Improved procedural safeguards with regard to sanctions adopted by the UN Security Council

In 2021, the Federal Department of Economics, Education and Research concluded after in-depth reflection that the implementation of the Court's judgment does not require legislative changes. Persons (natural or legal) targeted by UNSC sanctions may submit a delisting request to the Federal Department of Economics, Education and Research, which has full power of examination and whose decision is subject to appeal before the Federal Administrative Court, then, if necessary, before the Federal Court. Access to a judge is thus fully guaranteed.

*Al-Dulimi and Montana management Inc. (5809/08)*

Final Resolution  
CM/ResDH(2022)249

### ➤ Remedies against excessive length of proceedings

A total revision of the 1943 Federal Judicature Act was carried out by the Federal Office of Justice and Police in 1983 and the Federal Court was reinforced to address its excessive workload.

*Zimmermann and Steiner (8737/79+)*

Final Resolution  
CM/ResDH(83)17

### ➤ Presumption of innocence

The case concerns defamation proceedings, in which the defendant was ordered to pay the costs of investigation, trial and compensation in respect of the private prosecutors' expenses despite the fact that the criminal action was

*Minelli (8660/79)*

Final Resolution  
CM/ResDH(83)10

dismissed due to prescription. The European Court's judgment was widely published and disseminated to the national authorities.

The European Court found a violation of the Convention in this case, in which the applicants, as heirs, had been convicted of a tax-related offence allegedly committed by the deceased. The authorities in charge of implementing the 1990 Act on the direct federal tax aligned their practice with the Court's judgment. A further law in 2004 "on the removal of heirs' responsibility for tax fines" codified this change in administrative practice.

*E.L., R.L. and J.O.-L.*  
(20919/92)

[Final Resolution  
CM/ResDH\(2005\)3](#)

## ► Protection of private and family life

### ▢ Families of migrants under expulsion

Legislation adopted in 2008 allowed spouses awaiting removal and placed in different cantons to join each other and live together, in particular, in cases of a prolonged impossibility to implement the forced removal decision.

*Mengesha Kimfe*  
(24404/05+)

[Final Resolution  
CM/ResDH\(2011\)302](#)

### ▢ Access to one's children and international child abduction

The measures to address international child abductions were improved in 2007, in line with the Hague Convention: the transfer of competence to a single cantonal court accelerated return procedures; preference was given to the conclusion of friendly settlements in conflicts between parents; decisions on return were combined with concrete enforceable measures related to visiting rights; cantons were required to designate a single authority in charge of enforcement.

*Bianchi (7548/04)*

[Final Resolution  
CM/ResDH\(2008\)58](#)

### ▢ Protection of correspondence

2012 legislative amendments safeguarded lawyers' correspondence, in cases in which parties had been subject to secret surveillance measure who were neither suspect nor accused of an offence. The new legislation set out in detail the conditions and procedures required for the interception of telephone calls and the monitoring of postal correspondence and telecommunication.

*Kopp (23224/94)*

[Final Resolution  
CM/ResDH\(2005\)96](#)

### ▢ Gender identity

In 2010, new case-law of the Federal Court extended the possibility to obtain reimbursement of medical expenses incurred for sex-change operations. In addition, reimbursement shall no longer be refused if a two-year observation period has not been respected and the urgency of the operation has been mandated by medical reasons.

*Schlumpf (29002/06)*

[Final Resolution  
CM/ResDH\(2011\)161](#)

## ► Freedom of expression

### ▢ Broadcasting

The case concerns the refusal by the "Commercial Television Company" to broadcast a publicity by the applicant, an animal protection association, in view of its "clear political character", without striking a fair balance between the general interest of the community and the interests of the individual. The Court's judgment was disseminated to all authorities and agencies directly

*Verein gegen Tierfabriken*  
(32772/02)

[Final Resolution  
CM/ResDH\(2010\)113](#)

concerned and was presented in the quarterly bulletin of the Federal Ministry of Justice.

The Article 10 violation in this case concerned the applicant company's complaint that the Swiss Post and Telecommunications Authority had made reception of television programmes from a Soviet telecommunications satellite by means of an aerial dish subject to the consent of the broadcasting State. The 1922 Federal Act regulating telegraph and telephone communications strengthened one's right to receive and rebroadcast, through the local distribution network defined in a licence, radio and television programmes in compliance with the provisions of relevant international treaties.

The 2004 Law on the Police in the Canton of Graubünden introduced a precise definition of a "grave and urgent situation" (the security of the "World Economic Forum" of Davos in the present case) and defined the measures which the cantonal police are entitled to take in order to protect public order and safety. Such legislation is also enforced in other Swiss cantons.

*Autronic (12726/87)*

[Final Resolution  
CM/ResDH\(91\)26](#)

*Gsell (12675/05)*

[Final Resolution  
CM/ResDH\(2012\)61](#)

### ➤ *Right to marry*

Family law legislation, adopted in the 1990s, removed from courts the competence to prohibit a spouse who had been found to be at fault in divorce proceedings from remarrying for a given period.

*F. (11329/85)*

[Final Resolution  
CM/ResDH\(94\)77](#)

### ➤ *Protection against gender-based discrimination*

A 1994 amendment to the Civil Status Ordinance granted the husband the right to put his family name in front of his wife's, which he had taken as his family name following marriage.

*Burghartz (16213/90)*

[Final Resolution  
CM/ResDH\(94\)61](#)

The gender-based discrimination against bi-national couples was abrogated by law in 2011, providing each spouse the right to retain their surname or to choose the other spouse's surname.

*Losonci Rose and Rose  
(664/06)*

[Final Resolution  
CM/ResDH\(2012\)102](#)

In 2016, the Swiss Federal Social Insurance Office issued a circular to all competent authorities indicating that a reduction in a person's (in this case the applicant was a woman) working time for purely family reasons related to childcare should no longer be a reason for revising decisions granting them disability benefits. The authorities planned to introduce legislation to further align current practice with the European Court's case-law.

*Di Trizio (7186/09)*

[Final resolution  
CM/ResDH\(2017\)128](#)