

Delegation of Switzerland

HIGH-LEVEL MEETING ON VICTIMS OF TERRORISM

Vienna, 13 and 14 September 2007

1. Introduction

There have been many acts of terrorism perpetrated around the world during the last two decades and they have had dramatic consequences for various nations, individuals and families. Although to date Switzerland and Swiss territory have largely been spared the devastating direct effects of terrorism, Swiss citizens have on several occasions been the victims of such crimes. For many years now, as a sign of co-operation and international solidarity, the fight against terrorism has been one of the major social and political challenges facing Switzerland.

Switzerland welcomes the United Nations Global Counter-Terrorism Strategy, adopted by the General Assembly on 8 September 2006, which urges States to promote international solidarity in support of victims and calls upon countries to put into place, on a voluntary basis, national systems of assistance that deal with the needs of victims of terrorism and their families and facilitate the normalization of their lives.

The fight against international terrorism should be carried out with the aid of the judicial tools at the country's disposal for combating crime, with respect for human rights and international law. As the depositary of the Geneva Conventions, Switzerland is anxious that the instruments to ensure respect for the rule of law continue to be strengthened. It is essential that the measures taken to put a stop to the activities of terrorist groups respect the fundamental principles upon which our societies are based, such as justice, human dignity and religious tolerance. Furthermore, Switzerland believes that international security can only be ensured in the long term if States step up their co-operation with a view to eradicating poverty, preventing and resolving conflicts, and promoting human rights and the rule of law in an effective manner. Unless there is an improvement in the conditions in which people live and a universal respect for fundamental freedoms, there can be no guarantee that measures taken to combat terrorism will be effective in the long term. The strengthening of the dialogue among civilizations is encouraged by Switzerland and it is essential, given that mutual understanding among different cultures and religions can only help to prevent conflicts and terrorist acts.

Switzerland is also committed in the area of judicial co-operation on criminal matters and extradition: over the last few years, it has extradited a number of persons suspected of having committed terrorist acts. The most significant case was the extradition of Mohamed Achraf to Spain in 2005 for an attempted terrorist attack in Madrid.

2. Aid to victims

(a) Introduction

On 2 December 1984, the Swiss people and cantons adopted, by popular vote, a constitutional article on aid to victims, which served as the basis for the current legislation (Article 124 of the Federal Constitution). It was a counter-proposal to a popular federal initiative launched by a newspaper, the aim of this initiative being to encourage the State to concern itself not only with the fate of offenders but also with the fate of their victims.

The federal law on aid to victims of criminal acts (which we refer to by its French abbreviation, the LAVI), accompanied by a decree, entered into force on 1 January 1993. The European Convention on the Compensation of the Victims of Violent Crimes also came into force in Switzerland on that same date. Several legislative evaluations carried out between 1993 and 1998 showed that the system in place made it possible on the whole to provide effective assistance but that certain points could be improved. In view of this, the law has been revised. The draft revision of the federal law was adopted by the Swiss Parliament on 23 March 2007; the new law could enter into force on 1 October 2008 at the earliest. The decree is currently being discussed with the cantons.

In Switzerland, aid to victims is granted to any person who has been subjected, as a result of a criminal act, to a direct attack upon his or her physical, psychological or sexual integrity. Aid is also granted to close relatives (spouse, children, and others) of the victim. Aid is granted to any person who has been the victim of a criminal act in Switzerland and, under certain conditions, to victims of a criminal offence committed abroad. With regard to terrorist acts, it should be noted that Swiss law assumes that all victims of criminal acts, having been subjected to an attack on their physical, psychological or sexual integrity, are potentially vulnerable. The law makes no a priori distinction between different categories of victims. While special protection is however applied to the victims of sexual offences and to minor victims, Swiss law has made no provision for special arrangements or specific compensation for the victims of terrorist acts.

Aid to victims consists of the following three components:

- Aid provided by advice centres;
- Compensation and moral damages awarded by the State;
- Rights of the victim and protection of the victim as part of the criminal procedure.

The aid provided by the State is in principle of a subsidiary nature: it is accorded when the victim has been otherwise unable to obtain satisfaction whether from the offender himself or through private or social insurance schemes. Furthermore, the LAVI only compensates for damages directly linked to the attack and makes no provision for compensation in the case of damage to property.

The implementation of the law on aid to victims lies essentially with the cantons, which are better able, because of their proximity, to assess the victims' needs. The aid provided to victims on the basis of the LAVI is financed by each of the 26 cantons on its own

territory. If, as a result of extraordinary events (for example, terrorist acts), a canton is faced with particularly high costs, the Swiss Confederation may grant financial aid (as was the case following the attack in Luxor).

This report on aid to victims in Switzerland essentially focuses on aspects that may be of interest to victims of terrorist acts.

(b) The principal features of the Swiss system

(i) The importance of being able to provide effective aid quickly (aid provided by advice centres)

It is important that the victims be able to obtain quickly and in an uncomplicated way effective support from specialized institutions. This is why the law on aid to victims entrusts the cantons with the responsibility of ensuring that private or public advice centres, operating autonomously in their area of activity, be available to the victims. Some advice centres specialize in dealing with a particular category of victims (minor victims or victims of sexual violence). The police should provide information on aid to victims and, if the victim agrees, pass on his or her name and address to an advice centre.

The LAVI advice centres can counsel victims, assist them as they deal with various procedures and provide them with material, psychological, social, medical and legal help. Immediate aid (the most urgent needs resulting from the criminal offence) is free of charge. This may involve, for example, emergency financial aid, emergency accommodation, transport and translation costs or initial consultations with a lawyer or psychologist. The aid may be provided over a longer period of time (longer-term aid). If it is provided by the centre, this longer-term assistance is also free of charge; if, however, the centre employs a third party (for example, a lawyer or psychologist), a charge will be made for the aid according to the resources available for victims and the victim's personal situation (in the case of immediate aid and longer-term assistance). The aid and counselling provided by advice centres can also be offered to the victim's close relatives (parents, spouse, children, and others).

Victims are not required to seek out the advice centre closest to where they live: they are free to choose whichever one they want. The personnel of the advice centres are obliged to maintain the strictest confidentiality, enabling them to build up a relationship of trust with the victim. In principle, the advice centres should be able to provide aid at all times. In practice, this often means that a hotline is always available.

The aid provided by advice centres makes it possible to reduce the risks of secondary victimization. The fact is that victims can be helped with regard to the various procedures they must complete, be accompanied and supported psychologically, and therefore are not left on their own to deal with the consequences of the criminal act.

(ii) Compensation by the State for damages suffered by the victim (compensation and moral damages)

The victim of a criminal act committed in Switzerland is entitled to the payment of compensation and moral damages by the State if the victim is able to make the case that he or she has no way of receiving anything from a third party (from the offender or through social

or private insurance arrangements) or that the amounts that he or she might receive are inadequate. Compensation and moral damages are also awarded to Swiss nationals who are victims of a criminal act committed abroad provided that they are domiciled in Switzerland and that they do not receive sufficient damages from another State. Compensation is intended to make up for any financial loss (loss of earnings, loss of support, medical costs, funeral costs, etc.). This compensation is dependent on the resources available and has an upper limit fixed at 100,000 Swiss francs (a little more than 60,000 euros). As the name suggests, moral damages are intended to compensate for moral suffering. Moral damages are awarded irrespective of the income of any victim of a serious attack, if this is justified by the circumstances. Compensation and moral damages can also be awarded to close relatives. It should be noted that moral damages granted on the basis of the LAVI are not necessarily as high as those to which the offender has been (or would have been) sentenced; in fact, since State aid is of a subsidiary nature, apart from any issue of responsibility, the amount in question may be small.

In 2006, on the basis of the LAVI, compensation was paid in 162 cases and moral damages awarded in 664 cases. There were more than 28,000 consultations during the same period.

(iii) Protection and the rights of the victim during the criminal procedure

The LAVI works on the assumption that the victim can bring civil charges against the offender within the framework of criminal procedure. Provision is made for various arrangements, but the criminal court should at the very least, to the extent possible, fully consider less serious charges.

The LAVI requires that the authorities protect the victim and inform him or her of his or her rights during all stages of the criminal procedure. The victim can also be accompanied by a person of his or her choosing if he or she is called to give testimony or to provide information and can refuse to make statements disclosing details of an intimate nature. If the victim so requests, the authorities will prevent a face-to-face meeting with the accused; but in that case, account must be taken in some other way of the right of the accused to be heard. A victim under the age of 18 should not be subjected to more than two hearings; the victim need not be brought face to face with the accused if this might result in the child's being psychologically harmed.

As a secondary element to legal aid provided free of charge, the LAVI also makes provision for a possible reimbursement of lawyers' fees not only during the criminal procedure but also, for example, during a procedure involving a private insurer or social insurance. The victim is exempted from certain procedural costs.

(c) The principal features of the revised law on aid to victims

A new law on aid to victims was adopted on 23 March 2007, but it has not yet entered into force. It does not challenge the current system in its fundamental aspects. It will make it possible to better define the different categories of benefits, while strengthening the subsidiary nature of State aid and making provision for some improvements for victims (in particular, by granting them a longer period of time in which to exercise their rights). The law, which was adopted on 23 March 2007, is intended to refocus the aid on the benefits provided by the advice centres. This involves giving priority to measures that meet the

victim's most urgent needs and that enable the victim to quickly deal with the consequences of the criminal act. Accordingly, there is provision to make the benefits provided by advice centres a little more generous than they currently are. On the other hand, compensation for damages is relegated to secondary importance. Specifically, the moral damages are capped at 70,000 francs for the victim and 35,000 francs for his or her close relatives (a little more than 42,000 or 21,000 euros, respectively). However, the maximum levels for compensation and moral damages will be more frequently adjusted to the cost of living index.

Furthermore, the law adopted on 23 March 2007 calls on the cantons to take into account the special needs of certain categories of victims when making available to them the services of the advice centres. Should it be necessary in the future, victims of terrorist acts could also be covered by this law. In case of extraordinary events, such as acts of terrorism, the Swiss Confederation will be able, if necessary, to co-ordinate the work of the advice centres and the competent canton authorities.

The victim will also be largely exempted from certain procedural costs; in particular, he or she will be able, without incurring court costs, to appeal against a refusal on the part of an advice centre to provide services.

On the other hand, the law adopted on 23 March 2007 limits the benefits accorded in the case of a criminal offence committed abroad; only the aid provided by the advice centres will be accorded, somewhat more generously than is the case today. However, it is envisaged that no compensation and moral damages will be paid in this case. Like the police in Switzerland, offices of the Swiss Government abroad must also provide information to the victim on the LAVI and, if he or she agrees, must forward the victim's name and address to an advice centre.

As for the arrangements regarding criminal procedure, the intention is to incorporate them in the new Swiss Code of Criminal Procedure (which may enter into force in 2010). The provisions of the current LAVI have for the most part been retained and there are even some improvements. For example, provision is made to better protect the victim's anonymity vis-à-vis the public. Also, there is provision for supplementary protective measures, in particular for witnesses and persons called upon to provide information.

(d) Foundations of the aid to victims

The work to revise the law on aid to victims has provided us with an opportunity to reflect on the role of the State in this area. Is the State to assume responsibility in the same way as the offender or an insurance company? Should it compensate in full for the damages suffered by the victim?

The State's role is to ensure the protection of its citizens against acts of violence. It is therefore normal that the community should make a gesture towards its citizens that have been hardest hit by crime. Nevertheless, on the one hand, the State's responsibility to provide assistance is not to be placed in the same category as the responsibility of the offender; on the other, compensation by the State is of a subsidiary nature in respect of the compensation owed by the offender and does not necessarily cover the full amount of the damages suffered by the victim. This compensation may also be made contingent on the resources available for victims. In effect, the aim is not necessarily to return the victim to the situation he or she

would have enjoyed if the offence had not taken place, but as far as possible to help him or her deal with its consequences.

It would also seem that quick and effective aid facilitates the social and economic reintegration of the victims. Some victims are unable to deal with the consequences of the criminal act on their own. Lack of support or inadequate support can result in further trauma (secondary victimization). In such cases, the victim starts to become isolated, both economically and socially. Having been made more vulnerable physically and psychologically, the victim is at risk of losing his or her job and becoming isolated from his or her family. The gesture made by the State makes it possible to avert social costs that can weigh heavily both on the State budget (social insurance and public health) and on the private economy (absenteeism and poor performance in the work place). In this context, aid to victims can be seen as an adjunct to the community's efforts to encourage the social reintegration of offenders. In helping victims — be they victims of terrorist acts or of other criminal offences — to deal with the consequences of the offence, society is therefore not only making a free gesture but also a profitable investment. With regard to its laws on victims — which have proven their worth — Switzerland remains convinced that there would be no use at this stage in making provision for special arrangements on behalf of the victims of terrorist acts.