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Eidgenössische Kommission gegen Rassismus EKR
Commission fédérale contre le racisme CFR
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Federal Commission against racism

Bern, 22 October 2021

Briefing of the Federal Commission against Racism (FCR) to the UN Committee on the Elimination of Racial Discrimination (CERD), 16 November 2021

regarding Switzerland's reporting on its 10th, 11th and 12th country reports to CERD in November 2021

The Federal Commission against Racism (subsequently referred to as FCR) provided an assessment of the political, social and legal situation in a report of March 2020 as part of its activities and the mandate¹ assigned to it by the Swiss government (Federal Council).

The report of 2020 supplements Switzerland's detailed country report to the UN Committee on the Elimination of Racial Discrimination (CERD)² and the report of civil society (subsequently referred to as the NGO report) coordinated by humanrights.ch³ for the attention of the same committee.

The present briefing highlights the most important aspects of the FCR's 2020 report.

► IF DOCUMENTS IN ENGLISH ARE NOT AVAILABLE, REFERENCE IS MADE TO THE FRENCH VERSION.

¹ See the FCR's mandate at: <http://www.ekr.admin.ch/orgfr/f159.html>

² See Switzerland's country report to the CERD at: https://www.eda.admin.ch/dam/eda/fr/documents/aussenpolitik/voelkerrecht/CERD-Bericht-2018_fr.pdf

³ The NGO report is published by www.humanrights.ch

The key points of the FCR's assessment for the period 2014–2018

1. The legal protection against racial discrimination is poorly established. Particularly in the field of civil law, the legal basis for effectively enabling victims of racial discrimination to use legal redress for protection is inadequate.
2. Racially motivated hate crimes are not recorded in Switzerland. Uniform and mandatory recording of racially motivated offences is important to ensure effective monitoring of racist incidents in Switzerland. To guarantee correct recording, specific modules to identify and determine racist motives need to be developed for the police and integrated into regular mandatory training and development programmes.
3. The plans to establish a national human rights institution (NHRI) are expedient and important. However, such a human rights institution must be given adequate financial resources to allow it to perform its tasks.
4. Stigmatising statements and verbal errors of judgement at the expense of minority groups are regularly heard in the political arena in Switzerland.
5. Racial profiling is carried out by the police authorities and the Swiss Border Guard even though efforts to provide human rights training have been stepped up by the security and law enforcement authorities. Furthermore, there are no adequate nationwide complaints mechanisms for victims of racial profiling and police violence.
6. The Yenish, Sinti and Roma communities still suffer discrimination and stereotyping.
7. Asylum-seekers are sometimes subjected to unjustified restrictions of their fundamental rights and discrimination due to their legal status.
8. Racist hate speech on social media is a serious issue. As there is constant interaction between online and offline racism, it is vitally important that anti-racism strategies also address the internet and the way in which it works. Law enforcement also often falls short due to the international dimension of digital communication.
9. There is a lack of awareness-raising anti-racism campaigns.

For the briefing of the Committee, the CFR wishes to highlight point no. 1, regarding the poor protection against racial discrimination in the field of civil law.

The FCR follows the concluding remarks of CERD of 13 March 2014 on Switzerland's 7th, 8th and 9th periodic report, section C, paras. 6 to 18.

Briefing

Application of the convention in national law (paras. 6 to 8)

In general, it should be noted that the recommendation regularly repeated by CERD to develop the legal basis of protection against discrimination has not been implemented. The study by the Swiss Centre of Expertise in Human Rights (SCHR) entitled “Access to Remedy” concludes that there are major lacunae in the legal basis for protection against discrimination (especially in civil law) and that access to remedy is obstructed by existing procedural hurdles. There is urgent need for action in this respect. As part of its current strategic planning, the FCR focuses on promoting and encouraging the improvement of the protection against racial discrimination in civil law. It has therefore mandated a comparative legal study to analyse and compare the protection against racial discrimination in civil law in different European countries. The comparative study will be published by the beginning of next year.

Insufficient protection against racial discrimination in civil law

While art. 8 of the Swiss Federal Constitution provides for comprehensive legislation on gender equality (para. 3) and the elimination of inequalities that affect persons with disabilities (para. 4), such legal specification for combatting racial discrimination and further proscribed grounds of discrimination is lacking. To date, all political attempts to introduce a general anti-discrimination law have failed.

In the opinion of the FCR, the **lacunae in civil legislation against racial discrimination have serious consequences**. Victims of racial discrimination are poorly protected in important spheres of life (e.g. housing, employment), especially with regard to discrimination by private individuals. Reports show, however, that these spheres are some of the most affected by racial discrimination.

As long as there is no clear legal framework outside of criminal law that covers racial discrimination, it remains difficult to impossible to seek legal remedy against experienced discrimination in practice. It must be resorted to other, more diffuse forms of legal redress, which are not obviously perceived as “discrimination protection”. Substantial financial resources are required to use such forms of legal redress due to their complexity, e.g. for legal representation. The extremely low number of civil law judgements on racial discrimination reflects this problematic. In addition, there are significant procedural hurdles, e.g. the deposit on court costs.

The **online legal handbook on racial discrimination**⁴ published by the Service for Combatting Racism in cooperation with the FCR underlines how complex and inaccessible the available individual legal remedies for protection against racism are. In the case of legal violations in the field of racial discrimination, the legal consequences are often not appropriate and are unpredictable, making the risk of litigation difficult to assess. Moreover, the burden of proof lies with the victim, making it nearly impossible to take action against the more powerful party. For these and other reasons, many victims shrink back from filing a complaint in the first place.

⁴ <https://www.rechtsratgeber-frb.admin.ch/introduction/f115.html>