

NGO-Report

on Switzerland's seventh, eighth
and ninth periodic report to the UN-
Committee on the Elimination of
Racial Discrimination (CERD)

January 2014

Impressum

This report is submitted to the Committee on the Elimination of Racial Discrimination (CERD) by the core group of the *NGO Platform Human Rights*. Currently the core group consists of the following 14 organisations:

- Alliance Sud (www.alliancesud.ch)
- Amnesty International (www.amnesty.ch)
- Centre de conseils et d'appui pour les jeunes en matière de droits de l'Homme, CODAP (www.codap.org)
- Égalité Handicap (www.egalite-handicap.ch)
- Erklärung von Bern, EvB (www.evb.ch)
- Hilfswerk der evangelischen Kirchen Schweiz, HEKS (www.heks.ch)
- Humanrights.ch (www.humanrights.ch)
- Ligue suisse des droits de l'Homme, LSDH Section de Genève (www.lsdh.ch)
- National Coalition Building Institute, NCBI (www.ncbi.ch)
- Netzwerk Kinderrechte Schweiz (www.netzwerk-kinderrechte.ch)
- NGO-Koordination post Beijing Schweiz (www.postbeijing.ch)
- Schweizerische Flüchtlingshilfe, SFH (www.osar.ch)
- Schweizerischer Friedensrat, SFR (www.friedensrat.ch)
- Verein für soziale und kulturelle Arbeit Juko / Projekt gggfon (www.juko.ch).

The NGO platform of human rights includes at the moment 83 organisations, which does not mean that these organisations necessarily agree with every single demand in the report. For the list of the member organisations of the platform and further information see → http://www.humanrights.ch/en/Switzerland/SCHR/idart_9817-content.html.

The following organisations participated in the editing process: humanrights.ch; NCBI – National Coalition Building Institute, Schweizerische Flüchtlingshilfe, SFH; Schweizerischer Friedensrat, SFR.

Contact: *humanrights.ch*, Hallerstrasse 23, CH-3012 Bern, phone +41 31 302 01 06, E-mail: info@humanrights.ch

Content

- ABSTRACT..... 5
- 1 INTRODUCTION..... 7
- 2 RACISM, ANTI-SEMITISM AND XENOPHOBIA IN SWITZERLAND:
GENERAL REMARKS 7
- 3 ANTI-DISCRIMINATION LEGISLATION (CONCLUDING OBSERVATION
PAR. 9) 7
- 4 INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTION
(CONCLUDING OBSERVATION PAR. 10)..... 11
- 5 POLICE VIOLENCE (CONCLUDING OBSERVATIONS PAR. 12)..... 12
- 6 LEGISLATION ON FOREIGN NATIONALS AND ASYLUM-SEEKERS
(CONCLUDING OBSERVATIONS PAR. 17) 13
- 7 LEGISLATION ON NATURALIZATION (ARTICLE 2 AND 6 RDK AND
CONCLUDING OBSERVATION NO. 18)..... 16
- 8 YENISH, SINTI AND ROMA (CONCLUDING OBSERVATION PAR. 19).... 17
- ANNEX..... 19

Abstract

It is with concern that the non-governmental organisations (NGOs) note that in the reporting interval 2009-2013 the majority of the recommendations of CERD have once again not been implemented. The detailed NGO report of 2008 thus remains valid on almost every point.¹

The efforts to integrate foreigners have been strengthened in the past years. The federation supports measures at the level of the cantons. Overall, public authorities became more aware of the fact that discrimination is one of the main elements preventing the integration of foreigners into the Swiss society and thus must be stopped. On the other hand there is a noticeable lack of public campaigns to foster tolerance and respect, for example by speaking out against “hate speech”.

On a political level foreigners, including people living in Switzerland who are clearly discernible by their skin colour, way of living or religious practices, are used without remorse to pursue nationalistic policies. Foreigners, especially of dark skin and/or Muslims, people from South-Eastern Europe and asylum seekers are commonly depicted as backward, misogynous, criminal and violent and as such not capable or unwilling to integrate into the Swiss culture and value system. This mood finds its political echo in restrictive bills and citizens’ initiatives aiming to reduce the rights of minorities and so-called people from third party states (non-EU/EFTA). Contrary to the recommendations under CERD 2008 Nr. 17 and 18, amendments to laws in areas relating to foreigners, asylum seekers and citizenship have been made or are discussed.

However, Switzerland lacks relevant data measuring the extent, types and effects of racial discrimination. This renders it difficult to conduct an effective analysis of the situation and to monitor the effect of the measures taken by the federal state, the cantons and the municipalities. There is only selective research available showing the discrimination of minorities in the realm of professional life, on the housing market and in education (especially regarding applications for apprenticeships).

From the point of view of the NGOs the following points can be made:

1. The hostile attitude towards minorities (especially people with dark skin, Muslims of both genders, people from Eastern Europe, Yenish and asylum seekers in general) has not subsided. The media and parties at the right end of the political spectrum have enforced this attitude since the last review in 2008. Particularly the minorities living in Switzerland experience the rising level of xenophobia (see chap. 2).
2. Of special concern are political tendencies that attempt to question the binding nature of international human rights standards for Switzerland. The same goes for citizens’ initiatives like the 2009 Minaret Prohibition or the 2010 initiative demanding a change of art. 121 of the Swiss constitution dealing with the conditions necessary to evict a foreigner who committed a crime in Switzerland (see chap. 2).
3. No changes have been made to the anti-discrimination laws. There is still a lack of effective and efficient means to fend off discrimination by private individuals in the areas of work, rented housing or services. During the relevant reporting period we have not encountered one single verdict by a court deciding on the above-mentioned issues (see chap. 3).

¹ Report can be accessed at: http://www.humanrights.ch/upload/pdf/090911Schattenbericht_CERD_2008.pdf.

4. Although Switzerland does have a competence centre for human rights based on academic institutions, it still lacks an independent national human rights institution in the proper sense (see chap. 4).
5. The legal situation of foreigners and asylum seekers has deteriorated during the reporting period in areas such as social right (i.e. social welfare), right to family life, right to marry and found a family (see chap. 5).
6. The conditions for naturalization were aggravated on a federal and partly also on a cantonal level during the reporting period. The municipalities follow a rather heterogeneous practice in this regard and people from certain countries are significantly more likely to be rejected on discriminatory grounds, especially where the assembly at municipal level has to decide on the naturalization (see chap. 6).
7. A further issue is police violence. Especially people of dark skin and those “looking like foreigners” reportedly experience degrading and disproportionate treatment by the police. The members of the police force who commit those discriminatory acts are rarely called to account and there are still no independent complaints procedures (see chap. 7).
8. The same holds true for travellers: advances are matched by setbacks. Their situation is rarely discussed in the media, meaning that they have little access to media attention (see chap. 8).

1 Introduction

Switzerland submitted its seventh, eighth and ninth periodic report concerning its efforts for the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to the UN-Committee on the Elimination of Racial Discrimination (CERD) on 30 November 2012. The following shadow report analyses the point of view of civil society. It covers the time period since the examination of the seventh, eighth and ninth periodic Swiss state report before the Committee in 2008.

This commentary by non-governmental organisations *does not claim to be a comprehensive parallel commentary* on the Swiss report. The aim of this report is to point towards issues that civil society considers important and problematic and thus in need of the Committee's attention. The order of the issues follows the order of the 2008 Concluding Observations by CERD to the Swiss Government.²

The report is primarily based on the detailed shadow report of 2008. The analysis of this previous report still remains valid as the CERD recommendations have mostly not or only partly been implemented during the reporting period 2009 – 2013.

→ See the NGO Report on Switzerland's fourth, fifth and sixth periodic report 2008 on http://www.humanrights.ch/upload/pdf/080701_NGO_CERD_e.pdf

2 Racism, anti-Semitism and xenophobia in Switzerland: General Remarks

For a number of years various organisations – the Foundation against Racism and Anti-Semitism, the Swiss Federation of Jewish Communities (FSCI) and the Inter-Community Co-ordination against Anti-Semitism and Defamation (CICAD) as well as the Counselling Network for Victims of Racism are collecting data on racist incidents. This allows identifying at least tendencies concerning the victims, the scope and the forms of racism and racial discrimination in Switzerland.

According to the annual report 2012 of the Counselling Network for Victims of Racism, which analysed all cases registered in eleven counselling centres all across Switzerland, 194 cases were reported. The report³ shows that affected people were exposed to degrading treatment in the work place, on the housing market,⁴ in the public space or in regard to schooling and advanced training. A considerable part of the cases concerned racist presentations in the media. Racism most frequently occurred in the form of derogatory, offensive or abusive verbal statements. Disturbing is the fact, that physical violence has increased. Physical violence occurred in residential areas, in the form of police violence, in restaurants or in the public space. Other grave racist incidents, such as threats against people or extreme right-wing demonstrations or meetings, have also increased.

² See the Concluding Observations of the Committee on the Elimination of Racial Discrimination to the combined fourth to sixth periodic reports of Switzerland (CERD/C/CHE/6)

→ <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.CHE.CO.6.pdf>.

³ See at http://www.humanrights.ch/en/Switzerland/Internal-Affairs/Racism/Studies/idart_10072-content.html.

⁴ For the problem of discrimination in the housing market see the study: ANDREA BARANZINI, CAROLINE, SCHAEERER, JOSÉ V. RAMIREZ, PHILIPPE THALMANN, Do foreigners pay higher rents for the same quality of housing in Geneva and Zurich?, Swiss Journal of Economics and Statistics, 2008, Vol. 144 (4) 703-730.

There is the presumption that the estimated number of unreported racist incidents is high. Most reported cases originate from towns and villages which are in close proximity to counselling institutions, and the counselling network for victims of racism includes only 11 organisations by now. It does not include all institutions which persons seeking advice or witnesses can turn to. And in a number of regions there are still no specialised counselling services. In addition, the experience gained by the counselling centres shows that the reporting of an incident remains very difficult for the parties affected.

There is still a lack of detailed data in many fields so as to be able to effectively assess the extent of racist discrimination in Switzerland. Relevant data would allow to measure and to evaluate the impact of the measures taken by the confederation and the cantons, e.g. to combat police violence or to prevent racial profiling.

A direct survey of the minorities living in Switzerland about their experiences with racism and racist discrimination, as they are present for example for the EU-countries,⁵ is still pending. Such a study could set a signal that Switzerland is taking the problems of the minorities seriously.

Most vulnerable groups

The most affected groups are black people, religious minorities such as Muslims and Jews, people from South-East Europe and Yenish.

- *Black inhabitants*, whether of Swiss or other nationality, face degradation by security agents or custom officers more often than others. In particular, young men face blanket suspicions for drug crimes and often have to fear humiliating checks and hostility. Organisations of black people deplore that the government, the administration and the media do not pay attention or downplay the anti-black racism. It is disconcerting that the first report on racism in 2012,⁶ edited in 2013 by the Service for Combating Racism (SLR), which is part of the Federal Department of Home Affairs FDHA, at no point mentioned the anti-black racism.
- *Muslims* are confronted with several stereotypes concerning their religion. Practicing Muslims are insulted and offended because of their particular clothes or the headscarf. Wearing a headscarf in school is frequently under discussion, burkas are banned in the canton of Ticino by a popular vote following an initiative. Their religious customs and festivities are not respected by the majority of society. Muslim burial rituals are not permitted in the majority of communities. It should also be recalled that the construction of minarets is banned since November 2009. Muslims are regularly abused in political referendum campaigns by stereotyped and degrading presentations (see the illustration in the Annex), as is currently done on the occasion of the campaign for the referendum on the initiative against “mass immigration” (the vote will take place on February 9, 2014).
- In a similar way there are persistent prejudices and discrimination against the *Jewish population*. Practicing believers are insulted. Their religious customs and festivities are also not known and not respected. For more than a century kosher slaughtering practices of animals is prohibited in Switzerland. Anti-Semitic prejudices are raised regularly in

⁵ The European Union Minorities and Discrimination Survey (EU-MIDIS) asked 23,500 individuals with an ethnic and minority background about their experiences of discrimination and criminal victimisation in everyday life. See at <http://fra.europa.eu/en/publication/2012/eu-midis-data-focus-report-6-minorities-victims-crime>.

⁶ See «Rapport de service de lutte contre le racisme 2012 – Tour d’horizon et champs d’action », 18 mars 2013 (<http://www.edi.admin.ch/frb/02015/index.html?lang=fr>).

connection with different topics (money, power, conspiracy), e.g. in connection with the discussion in 2012 and 2013 on the circumcision of boys. Because of historically established fears (pogroms, Shoa, etc.) those incidents can be threatening for the Jewish minority.

- Representatives of the *Yenish, Sinti and Roma* complain about insults and offences to the point of violent attacks by the people from the mainstream of society or even police authorities. However, corresponding incidents rarely or never find their way to the public respectively corresponding news releases are not captured by the medias (see also chap. 8).
- *Asylum seekers* are - regardless of their country of origin – particularly vulnerable to racism. They are generally depicted as economic refugees or criminals in the media and by certain political parties. This affects the attitude of society in a very negative way and pushes humanitarian ideas and traditions into the background. An abiding theme that inspires racial attitudes is the question of how to organise shelter for asylum seekers. The cantons are obliged to host asylum seeker according to an allocation system. The search for appropriate lodging is however constantly difficult, because certain political circles stir up fear about the supposed criminal asylum seekers. The result is usually that the population refuses to accept them.

Last year the authorities restricted the free movement of the asylum seekers by reason of avoiding the disturbance of the local population. The case of the community of Bremgarten⁷ sensitised the public and the authorities to this problem. It became known, that the Federal Office for Migration (FOM) had signed an agreement with the town of Bremgarten. The agreement contains an appendix that defines several «sensitive areas» listed by the town council. These areas are not to be accessed by the asylum seekers. These taboo zones include the public swimming pool, schools and kindergartens, the casino and the multipurpose hall, as well as churches including their surrounding area. The FOM clarified that the whole issue was not about defining off-limit areas for asylum seekers, but rather about rules for their access to sensitive areas. Federal councillor Sommaruga stated that the basic rights of asylum seeker are non-negotiable. However it is well known, that such regulations are usual also in other centres and it is unclear, whether and how this bans is still enforced.

Policy debate

As the discussion around the initiative to ban the construction of minarets in 2009 or the initiative on the expulsion of foreign criminals (see also ch. 5) in 2010, which were both accepted in a plebiscite by a majority of the Swiss people shows, there is growing hostility against foreigners in Switzerland. This attitude is promoted by the fact that, contrary to the past, anti-constitutional initiatives are submitted to the vote of the population. Several initiatives which affect fundamental freedoms and human rights of minorities have also been accepted on a cantonal level, e.g. the already mentioned initiative against burkas in the canton of Ticino or in the canton of Berne the initiative to aggravate the requirements for the naturalization) (see also in ch. 7). The Swiss People's Party also discusses the idea to launch an initiative against headscarf in schools (e.g. in the canton of St. Gallen).

⁷ See at http://www.humanrights.ch/en/Switzerland/Internal-Affairs/Asylum/Implementation/idart_10156-content.html.

With these initiatives politicians with racist opinions are getting repeatedly securing a platform for their ideas by the campaigns preceding the votes. At the same time, xenophobic topics are chosen on purpose with the aim to mobilize majorities.

As far as we know, special measures to address racist or xenophobic campaigns were rarely taken (certain cities discussed the ban to display posters in public). Only the anti-racism norm in Article 261^{bis} Swiss Criminal Code⁸ can be used to combat racial statements or posters. But this provision is only applicable to openly racist speech acts or depictions.

There is still a lively debate going on about how to deal with popular initiatives that propose measures contrary to basic and human rights. A first proposal at federal level in 2013 was outrightly rejected by all sides. This also indicates that the debate about how national laws are to be interpreted in the light of constitutional and international norms is still going on. The Swiss People's Party threatens to get Switzerland to abandon the European Convention of Human Rights, if popular initiatives which are contrary to provisions of the ECHR and the Swiss constitution are not enacted word by word.

In these political settings international recommendations – as those of the CERD – find only little response. They are not taken serious and not taken into account in the legislative process, neither on a federal nor on a cantonal level.

3 Anti-discrimination legislation (concluding observation par. 9)

The recommendation to improve the anti-discrimination legislation has not been realized.

As from the year 2014 all the cantons will be obliged by the government to organize cantonal integration programs (Kantonale Integrationsprogramme KIP). One part of the KIP concerns protection against discrimination. However, there is reason to suspect that the majority of the cantons will by far not provide enough resources for the protection against discrimination. In some cantons the information centres, resp. advisory centres need yet to be established.

For years and despite recommendations of the CERD and other human rights bodies (such as CESCR, CCPR etc.) the federal parliament and the government refuse to close the loopholes in the anti-discrimination legislation and to guarantee effective legal remedies against discrimination in the field of employment, housing or services. Such recommendations were last rejected by Switzerland on 14th March 2013 at the end of the second UPR procedure before the UN human rights Council.⁹

In its current report to CERD the Swiss government maintains that the legal foundations already in place offer sufficient protection against discriminations. However, for the first time the government indicates that only a few court proceedings take place and that this might possibly be a result of the fact that recourse to the court is far from being an attractive option to the parties involved, given the high costs and risks compared to the relatively small benefits (report, no. 93).

⁸ See <http://www.admin.ch/opc/en/classified-compilation/19370083/index.html#a261bis>

⁹ See the rejected recommendations no. 123.27-123.29, 123.35-123.36, 123.38, 123.39, 123.49, 123.76, 123.77 in the document:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/CH/A_HRC_22_11_Add.1_Switzerland_E_iDrits.doc.

In fact, only a handful of court decisions are known, two of which are dating back to the 1980s/90s. Certain provisions which are repeatedly quoted by the government have, to the extent known, never been applied in a trial about discrimination issues. To our knowledge, there haven't been any court decisions in the last four years based on civil provisions and dealing with discrimination by private parties.

On grounds of parliamentary decision the government is now obliged to submit a report which shows the potential of the current legislation in the field of anti-discrimination and which gives a comparative survey of the effectiveness of existing legal instruments.¹⁰ A corresponding study has been launched and is currently undertaken by the Swiss Centre of Expertise in Human Rights (SCHR). Results are to be expected by the end of 2014. Should the study come to the conclusion that the anti-discrimination legislation does not provide an effective protection against discrimination, it may take several years until corresponding laws will be drafted, passed and enter into force.

Once again it shall be mentioned that Switzerland still does not acknowledge several instruments for the protection against discrimination on an international level. Concerning article 26 ICCPR, Switzerland issued a reservation which limits the general principle of non-discrimination to the rights of the CCPR and excludes it for social rights. Furthermore, Switzerland has not ratified the additional protocol no. 12 to the ECHR which provides a general prohibition of discrimination.

4 Independent national human rights institution (concluding observation par. 10)

The federal council decided in 2009 to create a centre of expertise in human right and in autumn 2010 the Federal Department of Foreign Affairs and the Federal Department of Justice and Police awarded a mandate to a network of four universities to found the *Swiss Center of Expertise in Human Rights* (SCHR; see for more information under <http://www.skmr.ch/en/about/overview/overview.html>).

The Swiss Center of Expertise in Human Rights is designed to be a service centre. The centre receives 1 million CHF per year from the Swiss government (deducting VAT: 920 000 CHF), but has to provide services determined annually in a "Contrat des prestations" (see the agreements for 2012 and 2013 under <http://www.skmr.ch/en/about/work-plan/work-plan.html>). Furthermore the SCHR takes on assignments from public authorities (Confederation, cantons, and municipalities), civil institutions and the corporate sector. With regard to contents the SCHR is not bound to any guidelines. Nevertheless, it has little leeway for own pro-active measures and statements.

The SCHR started its activities on 1 April 2011 as a pilot project scheduled to last until the end of 2015. Thereafter, it will be evaluated and decided whether it should be converted into an independent national human rights institution in compliance with the internationally applicable "Paris Principles" according to GA-resolution 48/134.

However, many MPs and civil servants still have doubts about the necessity of an independent human rights institution. The prevailing opinion is that Switzerland already disposes of sufficient institutional safeguards and institutions to monitor human rights.

¹⁰ 12.3543 – Postulat Naef Martin, Rapport sur le droit à la protection contre la discrimination, 14 Juin 2012.

The mandate of the *Federal Commission against Racism* (FCR) has remained unchanged on the key points over the last four years. The budget of the commission has been slightly increased since 2010, after being reduced in 2008.¹¹

Due to the ratification in 2010 of the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of 2002 the *National Commission for the Prevention of Torture (NCPT)* was able to take up its work. The commission verifies the conditions of persons deprived of their liberty on a regular basis through regular visits to places in which persons are or may be detained. This comprises, inter alia, visits to expulsion centres and accompanying flights organized by the Confederation to send back foreigners not eligible to stay in the country. The NCPT has a budget of CHF 700'000 per year.¹² The commission's inspection authority is more extensive than that of the SCHR or the FCR.

It would be desirable if the Federal Council would take a clear position in favour of the creation of an independent human rights institution and accordingly propose a bill to Parliament.

5 Police Violence (Concluding Observations par. 12)

In regard to police violence, the problems remain basically the same as in the last report (see NGO Report 2008, chap. 6), although some aspects have improved.

- **Lack of statistics on complaints against the police:** Only in a few cantons complaints against the police are collected and processed for statistical purposes, although both CERD and also the Committee Against Torture (CAT) recommended establishing such statistics. In 2011 Switzerland transmitted the following figures to CAT for the year 2010, shedding light on the extent of the issue: In the cantons Geneva, Valais, Basel Town and Berne 86 complaints against the police have been lodged. Of those, 38 have led to charges, in four of them the perpetrator was punished and in one case damages were awarded.¹³
- **Lack of independent complaints and prosecution institutions for cases of police violence:** Here too there have not been any significant changes. According to Switzerland's Report (No. 305) only five cantons and the city of Zurich established an appropriate institution. General Ombudspersons where people can lodge a complaint about acts of administrative arbitrariness exists only in five cantons and four cities.
- **Police training:** The Swiss Report says nothing about continued training of police personnel in human rights issues regarding their profession and it is very doubtful that such a training element does exist at all. The enumerations (see Swiss Report, No. 312 et seq.) only provide examples.
- **Recruitment of police personnel:** In the past years there have been single instances of the recruitment of members of minorities into the police force. However, only very few police units follow an effective strategy to integrate minorities into their ranks. There is

¹¹ After a budget cut in 2008 from 180'000 CHF to 155'000 CHF, it now disposes of over 200'000 CHF since 2010.

¹² See the commission's website at <http://www.nkvf.admin.ch/nkvf/de/home.html>.

¹³ Cited from SKMR, *Mise en œuvre des droits humains en Suisse: Un état des lieux dans les domaines de la privation de liberté, de la police et de la justice*, Berne 2013, par. 158.

a debate about whether foreigners should be allowed to be recruited into the police force. The relevant legal competence rests with the cantons. Efforts by the Swiss People's Party (SVP) to prohibit the recruitment of foreigners to the police force throughout the country failed in the National Council in 2012.¹⁴

All in all, *impunity* remains prevalent. The process dealing with such complaints is too protracted and very irksome for the victims. Many foreigners, especially those disposing of no legal right to stay or only a very insecure one, rarely have the possibility to lodge a complaint. On top of that, people lodging such a complaint regularly have to fear a counterclaim (see NGO Report 2008, No. 6).

In the case of *Dembele v. Switzerland* the European Court of Human Rights found a violation of article 3 (Prohibition of torture) on account of the disproportionate use of force by the gendarmes against an applicant coming from Burkina Faso, and on account of the ineffective investigation of the case.¹⁵

It would be helpful if administrative bodies were more assertive and inform minorities about the means available to them to counter acts of race discrimination or racial derogatory remarks by members of the police force or of public authorities. The Federal Council should strengthen the dialogue with the cantons in order to urge them to implement the recommendations of CERD regarding the prevention of police excesses.

6 Legislation on foreign nationals and asylum-seekers (Concluding Observations par. 17)

Both the laws on foreigners as well as those on asylum seekers are constantly under revision. There is a tendency to minimize existing rights to their absolutely necessary minimum, for example in regard to the right to family life or to even go below that minimum as for example in regard to social security provisions for asylum seekers and people being accorded a temporary right to stay in Switzerland. Human rights treaties actually explicitly *prohibit* restriction of rights recognized on the national level with the argument, that such rights are recognized in an human rights treaty in a lesser extent (see ICESCR and ICCPR art. 5 para.2).

A provision of the Swiss constitution (art. 121) which was adopted by popular referendum in 2010 by the cantons and the people on the expulsion of foreigners who commit crimes in Switzerland is not compatible with human rights requirements.¹⁶ This article now requires

¹⁴ Siehe 11.3211 – Motion Joder Rudolf, Keine Polizistinnen und Polizisten ohne Schweizer Pass, vom 17.3.2011 unter http://www.parlament.ch/e/suche/Pages/geschaefte.aspx?gesch_id=20113211.

¹⁵ *Dembele gegen die Schweiz*, Beschwerde-Nr. 74010/11, Urteil vom 24. September 2013.

¹⁶ Adopted by the popular vote on 28 Nov. 2010, in force since 28 Nov. 2010. Art. 121 reads as follows:

¹ The Confederation is responsible for legislation on entry to and exit from Switzerland, the residence and the permanent settlement of foreign nationals and on the granting of asylum.

² Foreign nationals may be expelled from Switzerland if they pose a risk to the security of the country.

³ Irrespective of their status under the law on foreign nationals, foreign nationals shall lose their right of residence and all other legal rights to remain in Switzerland if they:

- a. are convicted with legal binding effect of an offence of intentional homicide, rape or any other serious sexual offence, any other violent offence such as robbery, the offences of trafficking in human beings or in drugs, or a burglary offence; or
- b. have improperly claimed social insurance or social assistance benefits.¹

⁴ The legislature shall define the offences covered by paragraph 3 in more detail. It may add additional offences.

that people, who do not have Swiss citizenship, although they might have lived in the country for a very long time or were even born in Switzerland, face expulsion from the country if they are convicted of a crime, irrespective of the circumstances of the crime and of the perpetrator. Likewise, people who fraudulently obtained social security benefits also face expulsion. The Swiss legislature is still struggling to find a way of implementing this article without violating Switzerland's human rights commitments. The Swiss People's Party interpreted this as prevarication and already launched a follow-up initiative, demanding the implementation of the original initiative without any changes to its wording. Parliament has now to pass judgment on the legality of this second initiative. The Supreme Court has made remarks in 2013 that it will not stick to the original wording of a legal provision if this would result in the violation of human rights. Instead, it will attempt to interpret the relevant law in light of existing human rights provision.¹⁷

The automatic eviction has repercussions on those members of the expelled person's family who have followed them on "right to family" grounds and who have not yet obtained an independent residence status or who do not fulfil the requirements to obtain such a status.

A report by the Swiss Observatory for Asylum Seekers' and Foreigners' Law (SBAA) recently documented cases of foreigners who had to apply for and obtain social welfare benefits but were subsequently threatened with losing their right to stay in the country, although they obtained the benefits due to them being in a precarious economic situation or being unemployed.

During the last revision of the law on asylum seekers¹⁸ several refugee rights were curtailed:

- **Restricted right to family life for refugees:** Up until recently, Switzerland accorded asylum not only to the spouses and underage children of affected persons, but also other close relatives, if there were special grounds in favour of family reunification.¹⁹ This provision was cancelled entirely. Other close relatives who can demonstrate a significant dependence on the asylum seeker can only be brought into Switzerland under the minimum standards as pronounced by the European Court of Human Rights under art. 8 ECHR. In practice, this is already used very restrictively (about 11 per year). Thus, this rule affects few, but problematic cases.
- **More stringent requirements to accord permanent residence status to refugees:** Up until now, refugees who stayed in the country for five years were automatically accorded permanent residence status (C permit). The new provisions of the foreigner's law require a waiting period of ten years. In addition, the competent cantonal institution can exercise its discretion on whether or not to accord the C permit after ten years. The revision of the right on citizenship will require that a person wishing to obtain Swiss citizenship will first need to have a C permit (see below at chap. 6). This change to art. 60 para. 2 of the asylum law will have a very negative impact on the chances of refugees to eventually gain Swiss citizenship. Furthermore, the revision aims to establish practical

⁵ Foreign nationals who lose their right of residence and all other legal rights to remain in Switzerland in accordance with paragraphs 3 and 4 must be deported from Switzerland by the competent authority and must be made subject to a ban on entry of from 5-15 years. In the event of reoffending, the ban on entry is for 20 years.

⁶ Any person who fails to comply with the ban on entry or otherwise enters Switzerland illegally commits an offence. The legislature shall issue the relevant provisions."

¹⁷ Judgment of the Supreme Court of 12 October 2012 (2C_828/2011).

¹⁸ See the English translation at <http://www.admin.ch/opc/en/classified-compilation/19995092/index.html>.

¹⁹ Former Art. 51 para. 2 Asylum Act.

and legal requirements to obtain the C permit for refugees that many countries do not even require from their refugees if they request citizenship.

The Convention on refugees is aimed at finding long-term solutions (see art. 34 Convention on refugees). Since refugees cannot count on the protection of their home state they rely on protection by their host country. This leads to the demand that refugees should not face high hurdles to their efforts to integrate into the host state's society and to receive citizenship. Switzerland ratified the Geneva Convention on refugees and is thus bound by it.

- **Low level of social welfare benefits for asylum seekers and people with temporary residence status:** The new art. 82 para 3 of the asylum law²⁰ requires that asylum seekers and people in need but without the right to stay in Switzerland should get their welfare support mostly as benefit in kind. The level of welfare support must be below that accorded to local residents. The social welfare benefits accorded to asylum seekers was already lower than that accorded to Swiss citizens in all cantons. The law now prohibits that special needs of for example members of vulnerable groups (people with handicaps, children, elderly persons, etc.) can be considered.

Especially worrying are the strict rules in regard people who are only temporarily accepted, holding an F permit.²¹ The relevant provision was designed to be of a temporary nature only, applying to people who do not fit the refugee requirements but cannot be sent back to their home country. It is supposed to be applied for 12 months only with the possibility for extension. In 2011 a total of 23'310 holders of an F permit lived in Switzerland. Holders of this type of permit have serious troubles finding gainful employment or a traineeship or apprenticeship because it is unclear how long they will be allowed to stay in Switzerland. Despite this temporary nature of the permit, it is quite clear in most cases that they will remain in Switzerland for a longer period of time.²² This means that F permit holders are given the most minimal of means to survive, even though they will have to remain with this permit for years. This constitutes a violation of art. 5 e) RDK and art. 6 para 2 as well as art. 27 CRC (right of the child to a decent living standard), art. 26 CRC (social security). The child has a right to such things independent of the status of its parents (art. 2 para 2 CRC).

- **Reduction of social welfare benefits for asylum seekers:** Additional measures were decided, which led to the reduction or even complete removal of social welfare benefits during the asylum application process (art. 80 para 2 asylum law, art. 83 asylum law). These factors are: refusal to disclose one's identity, representing a danger to public safety and order, penal prosecution, gross refusal to cooperate and disregard of orders by the authorities. Already today a lack of cooperation results in sanctions, namely a speed-up of the application process. Art. 83 asylum law thus only refers to abusive behaviour regarding social welfare benefits. It does not seem justified to break with this legal sys-

²⁰ See revised provision at

<http://www.parlament.ch/sites/doc/CuriaFolgeseite/2010/20100052/Schlussabstimmungstext%201%20NS%20D.pdf>

²¹ According to the Federal Authority for Migration, permit F is accorded to „persons who have been told to leave Switzerland but who cannot be expelled due to public international legal norms, a realistic threat to the affected person or technical impossibility“.

²² A documentation on living conditions can be found under

http://www.humanrights.ch/en/Switzerland/Internal-Affairs/Asylum/Miscellaneous/idart_9763-content.html

tematic. Besides, art. 83 h – k are so loosely worded that a reduction of social welfare benefits can easily be justified.

7 Legislation on Naturalization (Article 2 and 6 RDK and Concluding Observation No. 18)

Discriminatory naturalization procedure in the communities

Applications for naturalization are assessed by the municipal assembly in about one third of all municipalities. Studies have shown that direct democratic processes (municipal assemblies) represent a higher hurdle for people wishing to obtain naturalization as opposed to a decision that is being made by elected politicians.²³ Factors such as status of integration, knowledge of the local language or duration of stay play a smaller role than the country of origin. People from Turkey or persons from Ex-Yugoslavia have fewer chances than for example Italians or Germans. The situation improved since municipalities are required to give reasons for their decisions. Despite this, people from certain countries still face difficulties, especially if they have a distinct religion, such as Islam. There is a lack of awareness of incidences of multiple discrimination, e.g. origin and gender.

The authors of the study mentioned above recommend to conduct the application process for naturalization not by the residents of the relevant community but by elected officials of the municipality, parliaments or specialised commission.

People whose application for naturalization has been denied face difficulties to obtain legal recourse as this process takes time, considering that the Supreme Court has a habit of sending the decision-making responsibility back down to the municipalities. The Supreme Court only intervenes when the person obviously fulfilled all objective requirements for naturalization and the decision not to naturalize is simply not comprehensible. This gives a lot of discretion to the communities (see NGO Report 2008, chap. 4).

Attempts for revision on the federal and cantonal level

There are attempts at federal and cantonal level to harmonise the requirements for naturalization, while at the same time making them more stringent. Especially the level of integration and knowledge of the local language is the focus of harmonization at federal level²⁴ The Federal Council suggested lowering the required duration of residence prior to an application for naturalization from 12 to 8 years. But in subsequent consultations the time limit was settled on 10 years. Another hurdle is the requirement of having obtained permanent residence status prior to making an application for naturalization.

It is worrying that the National Council decided, contrary to the suggestion of the Federal Council that the years temporarily accepted people spent in Switzerland will not count to-

²³ See JENS HAINMUELLER/ DOMINIK HANGARTNER, *Who Gets a Swiss Passport? A Natural Experiment in Immigrant Discrimination*, American Political Science Review 2013

(http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1898927) and the same, *Does Direct Democracy Hurt Immigrant Minorities? Evidence from Naturalization Decisions in Switzerland*, MIT Political Science Department Research Paper No. 2013-1 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2022064); MARC HELBLING (2008): *Practising Citizenship and Heterogeneous Nationhood. Naturalisations in Swiss Municipalities*. Amsterdam: Amsterdam University Press (IMISCOE Series): http://www.marc-helbling.ch/?page_id=4

²⁴ Current status of the revision project at http://www.parlament.ch/e/suche/Pages/geschaefte.aspx?gesch_id=20110022.

wards their total residence time. This means their residence time requirement doubles before they are eligible to apply for naturalization as they basically have to start from scratch logging residency years once they obtain the C permit.²⁵ The Cantonal Council refuses this option, but the final decision has not been taken yet.

Another contentious issue is the language requirement. It is also not clear whether the naturalization of children and adolescents will be made more difficult. Under the current rule the years that a person spent in Switzerland between the ages ten and twenty count double towards their total time of residence prior to the naturalization application.

The cantons also made naturalization more difficult to achieve. On 24 November 2013 the canton of Berne adopted a popular initiative which restricts the naturalization of person receiving social welfare benefits.²⁶ The high approval rates (56 %) led to the announcement of the Swiss People's Party to launch similar initiatives in other cantons. The criterion of receiving social welfare benefit impacts negatively on the situation of refugees and temporarily accepted people as they face severe difficulties finding gainful employment. Families with several children also tend to end up in a position where they need to rely on social welfare benefits (so-called "working poor"), the same goes for single parents. The Supreme Court will need to decide whether in such cases naturalization can be refused.

8 Yenish, Sinti and Roma (Concluding Observation par. 19)

The situation of the Yenish, Sinti and Roma has also hardly changed during the reporting period. Advances are matched by set-backs.

The cantons do a poor job recognizing their responsibilities under international human rights treaties and the Swiss constitution. There is a consistent lack of places where these people can set up tent: According to research done by the Foundation "A Future for Swiss Travellers", only one third of Swiss travellers have sufficient number of places to settle for a longer period of time and only 6 of 10 travellers will find a place for temporary settlement.²⁷

The canton of St. Gallen serves as example of „good practice“. The canton provided apartments in five houses to serve as winter quarters. The apartments comprise four rooms and cost CHF 1'250 per month.²⁸ Another positive point is the creation of a specific contact point for travellers in the canton of Aargau.²⁹

As already shown in the 2008 Report, the Yenish, Sinti and Roma, even though they possess Swiss citizenship, are underrepresented in parliaments, authorities and other centres of power in Switzerland. They have thus very few possibilities to make their voice heard in the democratic process, especially since they do not have their own media. Subsequently, little is known about the way they live and any attacks and discrimination they face and the few

²⁵ See as to the requirements of a permanent residence permit art. 34 Federal Act on Foreign Nationals FNA (<http://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a34>).

²⁶ <http://www.derbund.ch/bern/kanton/Bern-sagt-Ja-zur-Einbuengerungsinitiative/story/15493557>

²⁷ See Annual Report 2012 of the Foundation "a Future for Swiss Travelers" at http://www.stiftung-fahrende.ch/geschichte-gegenwart/sites/stiftung-fahrende.ch/geschichte-gegenwart/files/docs/jahresbericht_2012_0.pdf.

²⁸ See at <http://www.stiftung-fahrende.ch/geschichte-gegenwart/de/fahrende-erhalten-standplatz-in-der-stadt-stgallen>.

²⁹ https://www.ag.ch/de/bvu/raumentwicklung/projekte_4/fahrende/fachstelle/fachstelle_1.jsp.

incidences that do occur rarely make it into the news. If there are any news reports about them at all then they are depicted in stereotypes, as one study of the EKR shows.

The federal state, cantons and municipalities should further strengthen their efforts to provide sufficient places for temporary and longer-term stopovers. They should take measures to ensure that Yenish, Sinti and Roma are adequately represented in political power centres so as to allow them to stand up for their concerns on all levels of the federal state, cantons and municipalities.

Annex

Example for an actual campaign poster: „Soon one million Muslims?“ - “Because of that: stop mass immigration - now”

