

Switzerland

Report from 2014

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Switzerland/CHE-CbC-V-2014-039-ENG.pdf>

- **Context information from ECRI**

The Federal Supreme Court has ruled that freedom of expression must not be given such importance that it “completely voids the efforts to fight racial discrimination”. Several media concerns have adopted self-regulation measures to combat hate speech on their websites. Under public pressure, some politicians have had to resign following racist comments they had made. The level of racist, homophobic and transphobic violence remains relatively low. Several cantons and municipalities have created support bodies for Lesbian, Gay, Bisexual and Transgender (LGBT) persons. They have also adopted measures to deal with questions of sexual orientation and gender identity, particularly at school.

Refugees, cross-border workers and LGBT persons are also the target for xenophobic, homophobic and transphobic discourse.

More generally, Swiss society has not yet taken on board the extent of the specific problems faced by LGBT persons, and especially transsexual and intersexual persons. The fact is, however, that they are the victims of discrimination, rejection and hostility in many fields. One study highlights the discrimination against transsexual persons in vocational training, the labour market, when seeking housing or in their contacts with the authorities, in the health field and in their family and social environment. This is also the case for Lesbian, Gay and Bisexual persons. According to another study, the unemployment rate amongst transsexuals was 20 %, i.e. six times higher than the general rate. During the transition phase, each person questioned had had their work contract terminated and almost half had seen their occupational situation deteriorate significantly. LGBT persons are regularly required to reveal their sexual orientation or change of gender and they feel a considerable lack of support from the state. Only the city and canton of Geneva and the city of Zurich have appointed authorities tasked with promoting the rights of LGBT persons.

- **Transphobia and data on hate crimes in the country**

Switzerland still does neither have comprehensive and effective legislation to combat racism, homophobia and transphobia, nor easily accessible judicial procedures. The police does not systematically register offences having a racist, homophobic or transphobic motivation. The Federal Commission against Racism (CFR) has still not been given the key power of being able to hear and consider complaints of racism. At the same time, it suffers from a lack of independence. It is only Geneva, Vaud and Zurich that have appointed authorities tasked with promoting and protecting the rights of LGBT persons.

The system of police recording and following up of racist, homophobic or transphobic incidents should be improved and a police department should be tasked with actively combating hate speech on the Internet.

No statistics exist on homophobic or transphobic hate speech.

In Switzerland there are no reliable statistics on the extent of racist and homophobic/transphobic violence.

ECRI recommends that the Swiss authorities improve their system for recording and monitoring in particular incidents of violence in order to obtain more reliable statistics on the racist, homophobic or transphobic motivation of offences under the Criminal Code.

The available data suggest that the level of racist, homophobic and transphobic violence is relatively low. The counselling network for victims of racism nonetheless noted an increase in incidents of physical violence from five in 2011 to 14 in 2012. To reverse this trend, ECRI considers that the Swiss authorities must in coming years take firm steps against hate speech, as the spread of such discourse and tolerance of it lead to radicalisation and increased violence. At the same time, the authorities should exercise vigilance with regard to all forms of extremism.

It is estimated that several percent of the population are homosexual or bisexual. Up to 2012, 5 894 partnerships had been registered under the registered partnership scheme which applies only to homosexual couples. One out of three lesbian couples raises a child from a previous marriage. While the government claims that there are between 100 and 200 genuinely transsexual persons, other sources give considerably higher figures.

- **Legislative issues**

A change of name and gender by transsexual persons falls under the competence of the cantons (Article 30.1 of the Civil Code). Certain cantons require sterilisation, divorce and hormone or surgical treatment. In 2012, the Federal Office for Civil Status (OFCE), in a legal opinion, came out against surgical operations aimed at sterilisation or the construction of the genital organs of the desired gender. Drawing on the recommendations of the Council of Europe, it also stipulated that it was possible to convert the marriage or registered partnership where the partners or spouses wish to remain together. This legal opinion is binding on the cantonal authorities. While some courts have now abandoned the requirement for proof of sterility, other authorities and courts have retained these requirements, in the absence of an explicit legal basis.

- **Education and awareness-raising**

ECRI welcomes the action taken by the authorities in several cantons to address the dangerous silence which surrounds questions of sexual orientation and gender identity. Examples are the cantons of Geneva and Vaud which have decided to co-operate to combat discrimination and homophobia in schools. They have created the “mosaic” website as an information platform for young people and networks of volunteers and associates in schools to bring homophobia and transphobia out of the silence. In partnership with design schools and videomakers, poster and short film competitions have been run. A book provides advice to adolescents, their parents and teachers at the

coming-out stage. Adolescents themselves have addressed these issues and discussed homophobia and the 2013 Federal Youth Session.

- **List of recommendations from ECRI**

11. (§ 39) ECRI recommends that the Swiss authorities improve their system for recording and monitoring in particular incidents of violence in order to obtain more reliable statistics on the racist, homophobic or transphobic motivation of offences under the Criminal Code (§ 12 of General Policy Recommendation No. 11).

19. (§ 78) ECRI recommends that the authorities adopt comprehensive legislation against discrimination on the grounds of sexual orientation and gender identity and to include these grounds in Article 261bis of the Criminal Code.

20. (§ 82) ECRI recommends that the federal and cantonal authorities provide all LGBT adolescents with the necessary information, assistance and protection to enable them to live in accordance with their sexual orientation and gender identity. It also recommends that they implement measures in all cantons to promote in schools mutual understanding and respect for all persons, irrespective of sexual orientation or gender identity. They could draw on the good examples already to be found in several cantons.

21. (§ 85) ECRI recommends that the Swiss authorities task one or more independent authorities to promote understanding of LGBT persons and combat the discrimination against them. These authorities should cover the whole of Switzerland and be given a specific budget for this purpose.