

Country Visit: Switzerland
Report of the Personal Representatives of the OSCE Chair-in-Office
on Tolerance Issues
November 7-9, 2011

General Overview

Switzerland is proud of its system of direct democracy, typically embodied in the frequent referendums at the local, cantonal and federal levels. With the signatures of 100,000 citizens it is possible to propose changes in the Constitution via a referendum, whose results will be binding. Under its decentralized form of federalism Cantons, and even communities within Cantons, enjoy a high degree of autonomy and the imposition of national authority is kept to a minimum. Even in the relationship between religion and state, there is no single model. Twenty-four out of 26 Cantons have a system whereby certain religious communities are recognized under public law. All of these 24 Cantons recognize the Roman Catholic Church and a Protestant Church, 9 recognize the Christian Catholic Church and 6 recognize the local Jewish Communities. The two Cantons of Geneva and Neuchâtel maintain a separation of religion and state, but still provide for a sustained dialogue between the public authorities and the main religious communities.

While this system has provided for the construction of a stable and prosperous modern democracy, in time of crisis direct democracy may make it easier for populist organizations and parties to promote measures discriminating against minorities either at the cantonal level or nationally through country-wide referendums.

Switzerland has the highest percentage of foreigners in Europe and immigration is recognized as a necessity for its economic well-being. However, it has also exhibited mixed feelings toward its immigrant population. Switzerland has also become more religiously diverse in recent years. According to the 2000 official census (new data will only be available in 2012) the country consists of 41.6% Roman Catholics, 33% mainline Protestants, 4.3% Muslims, 2% Protestant Free Churches, 2% Orthodox, 1.8 % Jews, 0.3% Christian Catholic Church, with 11.2% identified as non-religious or non-affiliated.

Legal Framework

Several Constitutional provisions are relevant for protecting freedom of religion and belief and for combating discrimination and intolerance based on religion and race.

Article 15 of the Federal Constitution, on freedom of religion and conscience, embodies four principles:

- Freedom of religion and conscience is guaranteed
- Everyone has the right to choose freely their religion or their philosophical conviction, and to profess them alone or in community with others
- Everyone has the right to join or to belong to a religious community, and to follow religious teachings
- No one shall be forced to join or belong to a religious community, to participate in a religious act, or to follow religious teachings

It should be noted that in this context the term “religion” is broadly understood as including any expression or illustration of the divine. The state must be neutral with regard to religious beliefs, particularly in the field of school education; but this principle of neutrality is regarded as not being incompatible with public recognition of certain religious communities.

Article 72 of the Federal Constitution in its two original paragraphs applies the general principles to the relationships between religion and the state. It states that: “The regulation of the relationship between the church and the state shall be the responsibility of the Cantons. The Confederation and the Cantons may, within the scope of their powers, take measures to preserve public peace between the members of different religious communities.” Although Cantons are sovereign in deciding their model of relationship with religious communities, the freedom of religion and conscience and the freedom of association exclude any system of public authorization for religious communities.

By way of example, the cantonal authorities cannot prohibit the establishment of a religious community based on considerations aimed at preserving the dominance of a traditional religious denomination or community. The cantonal authorities, however, have a right to intervene, prohibit the establishment of or even dissolve a religious association if it pursues criminal objectives or promotes violence.

The First Chapter of the Federal Constitution deals with fundamental rights. According to Article 35, “Fundamental rights must be upheld throughout the legal system. Whoever acts on behalf of the state is bound by fundamental rights and is under a duty to contribute to their implementation. The authorities shall ensure that fundamental rights, where appropriate, apply to relationships among private persons.”

Article 36 stipulates that:

- Restrictions on fundamental rights must have a legal basis. Significant restrictions must have their basis in a federal act although the foregoing does not apply in cases of serious and immediate danger where no other course of action is possible.
- Restrictions on fundamental rights must be justified in the public interest or for the protection of the fundamental rights of others.
- Any restrictions on fundamental rights must be proportionate.
- The essence of fundamental rights is sacrosanct.

Relevant for combating racism and discrimination is also Article 8 of the Federal Constitution, stating inter alia that, “No one may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability.”

In the Swiss Criminal Code, two provisions are especially relevant for combating discrimination:

Article 261 deals with religious discrimination and provides penalties for, “Any person who publicly and maliciously insults or mocks the religious convictions of others.”

Article 261 bis deals with racial incitement and discrimination. It provides punishment or penalties for, “Any person who publicly incites hatred or discrimination against a person or a group of

persons on the grounds of their race, ethnic origin or religion.” It also prohibits discrimination on similar grounds.

Article 261 bis carries stronger penalties than Article 261, and prosecutors can also act on Article 261 bis without a complaint, while a complaint is needed for Article 261. Words such as “maliciously” and “publicly” are important in interpreting these provisions, since these prohibitions must be in balance with Article 16 of the Federal Constitution, which guarantees freedom of opinion and expression.

Racism and Hate Crimes

Only a limited number of prosecutions are initiated each year under Articles 261 and 261 bis. Recently there have been on average 4-5 cases per year of prosecutions under Article 261, mostly for desecrations of places of worship, and some 50 cases under Article 261 bis. There is a Federal Commission against Racism to which theoretically all racially motivated hate crimes should be reported by the Cantons, although this is not always the case.

Concerns have been expressed about racist manifestations at football games which have escalated from mere “hooliganism” to extremist political expressions. Both federal monitoring and local initiatives try to counter this phenomenon, recognizing that one third of Swiss major league footballers are of immigrant origin.

The most targeted group, according to some NGOs, now consists of South-Eastern Europeans, particularly Albanians, who constitute the largest immigrant community in Switzerland. Questions of ethnic and religious discrimination overlap. While most Albanians are Muslim, they do not exhibit a strong religious identity and are reasonably well integrated into Swiss society. Discrimination appears often to be based on nothing more than the spelling of family names which reveal their Balkan origins.

A special area of concern is the spread of hatred on the Internet, where one finds German and Italian extremist organizations linked with several Swiss Web sites. Civil society representatives believe that government authorities are not sufficiently aware of the need to take action against this.

Combating racism is not possible within the framework of Switzerland’s direct democracy without the substantial participation of civil society. Therefore, the Federal Service to Combat Racism offers advice and financial support for private institutions and NGOs which fight against racism or promote human rights, and since 2001, it has supported 914 projects with approximately 18.5 million Swiss francs.

Anti-Semitism and the Jewish Community

Anti-Semitism had long been a feature of Swiss society, certainly inhibiting the growth of the Jewish community which numbers about 20,000. Swiss policy during the Holocaust, which came under international scrutiny in the 1990s, was revealed to have turned away Jewish refugees at its borders and thereby contributed to their persecution and murder.

Since 1893, the country has maintained a ban on kosher slaughtering, which even government representatives concede was an intentional anti-Semitic measure. As some countries now consider imposing similar restrictions—usually spurred on by animal rights activists—there is considerable debate and vocal opposition from local Jewish communities and international supporters. (The Netherlands is the most recent example.). Some officials have suggested that an appeal on the basis of religious freedom provisions might prove successful in Swiss courts. However, the Swiss Jewish Community, which imports its kosher meat from France, has chosen to live with the restriction, fearing that a public fight would result in an anti-Semitic backlash. Community leaders have sharp memories of the battles fifteen years ago by international Jewish organizations and US officials to force Swiss banks to pay claimants for Holocaust-era dormant accounts. The anti-Jewish attitudes stirred up by those efforts have still not fully dissipated.

Jewish Community representatives state that anti-Semitism no longer plays a major role in the everyday life of Swiss Jews. However, anti-Semitic discourse is a feature of populist and right-wings politics, while on the left of the political spectrum extreme criticism of Israel may sometimes also lead to anti-Semitism. According to one national survey, twenty percent of the population may share one or another form of anti-Semitic prejudice, and a similar number consider Swiss Jews to be “foreigners.” The additional fear of international terrorism has led most Jewish communities to take expensive security measures to protect their institutions, efforts that lack government financial support.

Jewish roots in Switzerland are deep, and Jews themselves feel their presence is respected by a large majority of Swiss society. Yet, they are also aware that in times of international or domestic tensions anti-Semitic reflexes may be mobilized quite easily. They are unnerved by the successful populist campaigns in recent years. While primarily targeting Muslims, they fear that these political changes might also upend the long standing pragmatic approach adopted by the Jewish Community to insure its place in Swiss society.

As in other countries, the presence of anti-Semitism on Internet sites is an increasing problem. Community representatives report that while Switzerland has an effective cyber-criminality unit, its focus is on other problems, such as child pornography.

The Jewish Community is well organized and has developed its own programs for countering anti-Semitism, some of which receive support from the Federal Service. They include a graphically illustrated history for school children, the organization of study trips to Auschwitz for teachers, as well as various seminars, courses, and exhibitions. Since education is the responsibility of the individual Cantons, financial support and implementation can vary greatly. A Holocaust commemoration day has been established with unanimous support of all Cantons. A federal law prohibiting Holocaust denial was adopted in 1995, although efforts to ban Nazi symbols have failed to win approval.

Intolerance and Discrimination against Muslims

Intolerance and discrimination against Muslims grew after 2001 as a consequence of international tensions, and were exploited by right-wing and populist parties. Groups such as Albanian and Bosnian immigrants, once defined by their ethnicity, were now identified by their religion. Differences among various communities were overshadowed by a media where Muslims as a whole were depicted in a negative light. This negative public depiction of Islam was only broken by

the occasional positive portrayal of specific Muslim individuals. Discrimination appears to be most evident in applications for citizenship (decided on a local and Canton level) and in employment. By way of example, a large chain of supermarkets announced that it would not employ any women wearing the hijab.

Several incidents of anti-Muslim discrimination by employers are reported by NGOs together with four cases of overt hate crimes in the last three years. Muslim students also report that they experience various forms of discrimination in universities.

One area of special sensitivity concerns the establishment of cemeteries. Current Swiss practice frowns on the establishment of religiously-based cemeteries. Since this is not a concern for those religious groups whose cemeteries were previously established, it is a challenge primarily for Muslims. As with other matters, it must be addressed on a municipal Canton level. Some, such as Neuchâtel in 2010, came to a mutually acceptable solution in dialogue with Muslim NGOs, but that has not been the general rule.

Civil society leaders say that more must be done to counter discrimination against Muslims. At the same time they recognize that positive steps are hampered by their own inability to forge a common umbrella organization to represent and advocate for their interests. Nevertheless, this weakness should not be an excuse for government inaction.

Minarets

Switzerland drew international attention with the introduction and passage of a referendum in November 2009, banning the construction of minarets. Swiss officials took pains to explain that the country's direct democracy procedures permitted such a referendum however abhorrent it may appear. Even as federal authorities and Parliament, following a Justice Ministry advisory opinion, declared the referendum legally permissible, they recommended that Swiss voters reject it. Mainstream Christian churches and Jewish organizations made similar recommendations. Nevertheless, the referendum passed by a wide margin, and the provocative nature of the campaign including inflammatory posters suggested that the voters saw it as a referendum on the growing presence of Muslims in Swiss society. The government and academia were clearly surprised by the results, and the process of explaining it is still underway. Experts with whom we met cited a combination of post-9/11 fears of Islamic fundamentalism, ethno-nationalism and populist politics to blame for the outcome.

It was noted that the referendum has had little practical impact on the freedom of Muslim worship in Switzerland. It does not apply to existing minarets, and it does nothing to hinder the building of mosques and prayer halls without minarets.

Following its passage some groups appealed to the European Court of Human Rights to strike down the new law but this appeal was rejected. The Court ruled that it would first be necessary for an actual request for the construction of a minaret to be denied and for all national legal remedies to be exhausted. The fact that no such construction request has been made even two years since the law was adopted may suggest that Swiss Muslim communities are reluctant to draw further attention to their situation. Instead, some consideration is now being given to secure signatures for a new referendum in the belief that many in the Swiss population would vote differently having seen what damage this has brought to Switzerland's international reputation.

Travelers (Jenisch)

Although Roma and Sinti are small in number, the country has an historical community of travelers, known as Jenisch. They are not ethnically Roma and there is considerable controversy about their origins, but they are estimated to number 35,000 to 50,000, with 3,000 who still lead a semi-nomadic existence. Over the centuries they have been marginalized and faced discrimination. Recently, the federal government has candidly acknowledged past injustices and discrimination against the Jenisch, and they have been officially recognized as a national minority. Education of Jenisch children— which for travelers happens mostly in winter, when their caravans stop moving, while in the summer teachers must send their lessons by mail – has improved, and there are two federal programs aimed at preserving Jenisch identity and language.

Other Forms of Religious Discrimination

Catholic NGOs and academic studies report a selective perception of the Roman Catholic Church in certain media, and forms of criticism verging on ridicule and intolerance particularly about the Church's position on moral issues. Small free evangelical churches accused of "fundamentalism" may encounter similar problems. There are in Switzerland more than 300 "migration churches" founded by immigrants from Latin America, Africa and Asia which report occasional forms of discrimination, primarily based on ethnic grounds. A specific problem concerns the 35,000 Alevi, an ethnically Turkish minority who came since the 1980s as immigrants and refugees. Some of them take issue with being designated as Muslim by several official institutions and would prefer to be classified as a separate religious group. Some groups designated as "cults" in official documents, particularly in certain Cantons – but not guilty of any criminal deed – object to this classification.

Recommendations

- Continue the national conversation on how the peculiar features of Swiss democracy, including direct democracy and federalism, may maintain their strength in contributing to a stable and open society, while avoiding their possible misuse for discriminating against unpopular minorities.
- Continue and broaden efforts to publicly acknowledge past episodes of racism, anti-Semitism and discrimination against immigrants, Jews, Jenisch, and other minorities, and develop educational programs aimed at explaining the positive role played by immigrants and minorities in the construction of a stable and prosperous Switzerland.
- Improve data-collection on hate crimes and prosecutions under Articles 261 and 261 bis of the Swiss Criminal Code, analyze these data, including by disaggregating them with respect to targeted groups, and report regularly to ODIHR.
- Promote mutual understanding and tolerance, and combat discrimination against the Jenisch community and Roma immigrants in Switzerland, including with awareness-raising campaigns targeting the majority population.
- Consider more effective measures to combat anti-Semitism, particularly on the Internet and through the ban of racist and anti-Semitic symbols.
- Direct the cyber-criminality unit to investigate and address the problems of racism and anti-Semitism.

- Increase support, including financially, to Jewish organizational efforts to disseminate material against anti-Semitism in public schools and to offer educational trips to Auschwitz.
- Support and promote the formation of an umbrella organization for Muslims, although the lack of such an organization should not prevent an inclusive policy towards existing Muslim NGOs.
- Continue the dialogue with industry and commerce in order to prevent discrimination against Muslims, particularly Muslim women wearing the hijab, in the labor market, and disseminate educational material aimed at combating anti-Muslim stereotypes, including material prepared by OSCE/ODIHR.
- Consider what measures can be taken to overcome the most negative cultural and social effects of the 2009 ban of minarets, also in preparation for a future repeal of the ban.
- Raise awareness that certain forms of stereotyping or caricaturing Christian Churches and their teachings may lead to intolerance and discrimination.

List of participants in meetings with the Personal Representatives

Meetings with representatives of civil society

- Mr. Oscar A.M. Bergamin (ICCS)
- Dr. Herbert Winter (Chair of SCR, President of SIG)
- Mr. Johanne Gurfinkiel (CICAD)
- Ms. Sabine Simkhovitch-Dreyfus (SIG)
- Mr. M.M. Hanel (VIOZ, Muslim Organizations of Zürich)
- Mrs. Hannah Sarpong, (European Muslim League)
- Mr. Abdel Azziz Qaasim Illi (ICCS)
- Hanspeter Ernst (Zurcher Lehrhaus)
- Hartmut Haas (Director Maison des religions)
- Robert Heymann (Christian-Jewish Cooperation Switzerland)
- Alime Koseciogullari
- Pastor Christoph Knoch (AKB/CTEC)
- Susanne Sadri (The Swiss Bahai Community)
- Pastor Gunnar Wichers (Elgise Evangelique Methodiste de la Suisse)
- Judith Morales (Union Suisse des Bouddhistes)
- Barbara Schneider (Union Suisse des Bouddhistes)
- Seriyе Ozturk (Alevi)
- Sasikumar Tharmalingam (Hindus)
- Sadaqat Ahmed (Ahmadiyya Muslim Jamaat)
- Attaul Wasay (Ahmadiyya Muslim Jamaat)
- Valentina Smajli (Forum pour un Islam progressiste)
- Muhammad Hanel (Association of Islamic organizations in Zurich VIOZ)
- Abaz Imeri (Muslim organization)
- Besir Emini (Muslim organization)
- Gerda Hauck (House of Religions, President)
- Johanne Gurfinkiel (CICAD)

Swiss Centre of Expertise in Human Rights

- Prof. Dr. Walter Kälin (Director of SCHR)

- Prof.Dr. Gianni D’Amato (member of the governing body of SCHR)
- Prof. Dr.Judith Wyttenbach (expert of SCHR)
- Ms. Anne-Grethe Nielsen (Executive Director of SCHR)

Swiss National Science Foundation: National Research Program NFP 58: “Religions, State and Society”

- Prof. Dieter Imboden, President of Research Council SNF
- Prof. Dr. Christoph Bochinger, President of the Steering Group NFP 58, Professor of Religious Studies, University of Bayreuth
- Dr. Christian Mottas, Program Coordinator of the National Research Program NFP 58
- Dr. Patrik Ettinger, Project Manager NFP, member of the research field „publicity and society“ (fög), Leader of the Unit science/doctrine and department science reporting
- Dr. Samuel M. Behloul, Project Manager NFP, Tutor at the Seminar of Religious Studies, University of Lucerne
- Dr. Daniel Gerson, Project Manager NFP, Institute of Jewish Studies, University of Basle
- Dr. Mallory Schnewly Purdie, researcher NFP, Senior researcher, University of Lausanne
- Mr. Deniz Danaci, Researcher NFP, member of the project team at the Institute of Political Sciences, University of Zurich
- Dr. Andreas Tunger-Zanetti, scientific staff, Center for Research on Religion, University of Lucerne

Meetings with Neuchatel Canton officials and representatives of religious and migrant communities

- Thomas Facchinetti (Head of Service for multicultural cohesion COSM)
- Jean-Claude Marguet (Head of Compulsory School Unit)
- Gilles Guignard (Superintendent, Head of Intelligence Service, Cantonal Police)
- Pierre De Salis (Pastor, inter-religious dialogue group)
- Gisele Ory (President of the Cantonal Council)
- Saur Françoise (Communate des saurs de Grandchamp)
- Abdellaod Allaoui (Communate Soufie)
- Jiko Simone Wolf (Tradition bouddhique Zen Soto)
- Nourredine Ferjani (Association Culturlie Musulmane de Neuchatel)
- Bertrand Leitenberg (President de la Communité Israelite de la Chaux-de-Fondis)
- Pasteur Olivier Favre (President de la Federation Evangelique Nechatel)
- Pere Alexandru Tudor (Eglise orthodoxe de Neuchatel)
- Quissem Haddan (Center culturel islamique de las Chaux-de-Fondis)

Swiss Council of Religions SCR

- Herbert Winter (Chair of SCR, President of SIG)
- Gottfried Locher (Pastor, President of the Swiss Council of Evangelic Communion SEK)
- Farhad Afshar (Tutor, President of the Swiss Coordination of Islamic organizations KIOS)
- Urs Schellenberger (Secretary of SCR)

Federal Commission on Migration EKM

- Francis Matthey (President of EKM)
- Simon Rothlisberger (Swiss Council of Evangelic Communion SEK)
- Alban Krasniqi (Coordination and project manager)

- Simone Prodolliet (Director EKM)
- Alice Uehlinger (Secretariat EKM)
- Emine Sariaslan (President of Forum for integration of migrants FIMM)

Federal Commission against Racism EKR

- Prof. Dr. Georg Kreis (President of EKR)
- Sabine Simkhovitch-Dreyfus (Vice-President of EKR)
- Rifa'at Lenzin (Muslim representative at EKR)
- Doris Angst (Director of EKR)
- Kathrin Buchmann (Deputy Director EKR)
- Wolfgang Burgstein (Swiss Bishops Conference future representative at EKR)

Meetings with representatives of Federal government bodies and units

- Dr. Luzius Mader (Vice-Director of the Federal Office of Justice)
- Dr. Marc Schinzel (Scientific staff, Federal Office of Justice)
- Marc Renfer (Federal Criminal Police, Federal Office of Police)
- Dr. Stefan Leutert (scientific staff, Conference of the Cantonal Justice and Police Directors)
- Daniel Bachmann (Head of catholic pastoral care, Federal Department of Defense, Civil Protection and Sport)
- Vincent Joris (Head of Specialized Unit on Extremism in the Army)
- Adrian Gerber (Head of Division Integration, Federal Office of Migration)
- Dr. Michele Galizia (Head of Specialized Unit in Combating Racism FSCR)
- Mirjam Okoani-Zeller (Specialized unit in combating racism, FSCR)
- Eva Wiesendanger (Deputy Head of Specialized Unit in Combating Racism FSCR)
- Dr. Sylvie Durrer (Director of Office for Gender Equality EBG)
- Silvia Studinger (Head of Unit Universities, Directorate of State Secretariat for Education and Research SER)
- Marcel Heiniger (Head of demographic and thematic analyses, Swiss Federal Statistical Office)
- Rolf Escher (Head of Service of national and international cooperation, Swiss Federal Statistical Office)
- Dr. Bernard Wicht (Head of Coordination Unit Culture and Society, international Organizations)
- Regina Bühlmann, (Scientific Staff)
- Mario Gattiker (interim Head of Federal Office of Migration Minister)

Federal Department of Foreign Affairs

- Mr. Peter Maurer (State Secretary)
- Amb. Arthur Mattli (Head of Political Division I, FDFA)
- Minister David Best (Head CoE and OSCE Section)
- Adreinne Schnyder (DPI, CoE and OSCE Section)
- Florian Gubler (Head of UN GA/ECOSOC Section, DP III FDFA)
- Martin Roch (Political Division, Human Rights Policy Section)
- Dr. Christoph Spenlé (Deputy Head of Human Rights Section, Directorate of International Law, FDFA)

OSCE/ODIHR

- Taskin Soykan (Adviser on Combating Racism, Xenophobia and Discrimination Focusing on Intolerance and Discrimination Against Muslims, TND)
- Timur Sultangozhin (Associate Program Officer, TND)