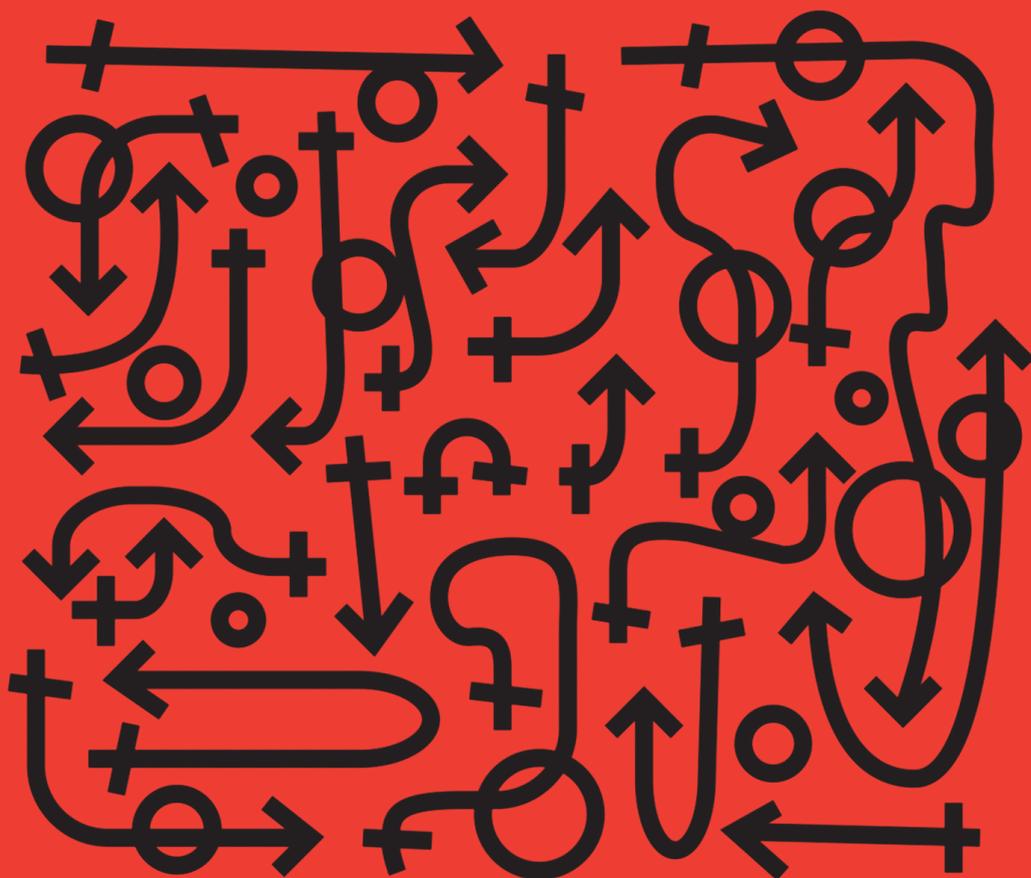


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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SWITZERLAND

SEXUAL RIGHTS: STILL A LONG WAY TO GO



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Introduction

Switzerland is known as a multilingual and multicultural country trying its best to organise the differences between cultures under a coherent national framework – “coherence” in this context is a key word in Swiss modern history. The word refers to the inclusion of different languages and cultures – German, French, Italian and Romansh speakers – but also signifies respect for minorities in general. There are not many countries in the world with comparable records of respect for their diverse minorities.

On the other hand, Switzerland is also primarily a Christian society with around 39% Catholics and 27% Protestants and dominated by their corresponding traditional values¹ – nowadays more in rural areas than in cities. In this hegemonic culture marked by Christian beliefs and traditions, sexual orientations, behaviours and rights – other than heteronormative sexual relationships – are a relatively new phenomenon, face various prejudices and common misunderstandings and are frequently rejected. This dynamic creates an ongoing quarrel between traditional (mainly rural) and more liberal (mainly urban) parts of the Swiss society.

Policy and political background

The legal framework that guarantees sexual rights in Switzerland is clear, starting with the Federal Constitution and the European and international human rights treaties. These include: the Federal Constitution, Article 8 (Equality before the law),² the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 (Prohibition of discrimination on any grounds),³ Protocol No. 12 to the Convention for the Protection

of Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, Article 2,⁴ the International Covenant on Economic, Social and Cultural Rights (Part II), Article 2⁵ and the International Covenant on Civil and Political Rights (Part II), Article 2 and 26.⁶ Because of this it is clear that the problem is not the lack of legal standards and guarantees, but is more a question of the enforcement of these standards.

Registered partnerships are relatively recent in Switzerland. In a nationwide referendum in June 2005,⁷ 58% of the population approved a law allowing registered partnerships. This grants same-sex couples the same rights and protections as opposite-sex couples. However, they may not adopt children, seek fertility treatment and use the registered partnership to facilitate the Swiss naturalisation of a foreign partner. The law became effective in January 2007.⁸

Finally, despite the legislative guarantees, the European branch of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)⁹ has analysed legal standards for LGBT people across Europe, and in this ranking Switzerland was placed 31st out of 49 countries, fulfilling only 28% of the criteria for full equality.¹⁰

Loopholes in the law

The history of lesbian, gay, bisexual and transgender (LGBT) people is similar in neighbouring European countries.¹¹ Regarding legal frameworks, human rights violations and the unequal treatment of LGBT people should be a matter of the past in Switzerland. This is the position of the Lesbian Organisation Switzerland (LOS),¹² the Pink Cross,¹³

1 Languages and religions – Data, indicators Religions, Swiss Statistics 2015, Federal Office of Statistics, Neuchâtel. www.bfs.admin.ch/bfs/portal/en/index/themen/01/05/blank/key/religionen.html

2 <https://www.admin.ch/ch/e/rs/1/101.en.pdf>

3 conventions.coe.int/Treaty/en/Treaties/.../005.htm

4 www.un.org/Overview/rights.html

5 www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

6 www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

7 https://en.wikipedia.org/wiki/Swiss_referendum,_June_2005

8 https://en.wikipedia.org/wiki/Registered_partnership_in_Switzerland

9 www.ilga-europe.org

10 www.pinkcross.ch/recht/rainbowmap#

11 https://de.wikipedia.org/wiki/Geschichte_der_LGBT#Das_21._Jahrhundert

12 www.los.ch/de

13 www.pinkcross.ch

the Transgender Network Switzerland¹⁴ and the Umbrella Organisation for Rainbow Families¹⁵ who launched a common human rights campaign in April 2012 in Zurich.¹⁶

The organisations take the position that although the UN adopted the Universal Declaration of Human Rights more than 60 years ago, some human rights are still repeatedly infringed on, even in Switzerland. One violation listed on a flyer published by the organisations and accompanying the human rights campaign is the right to physical integrity of transgender people, who currently have to undergo sterilisation in order to change their registered sex.¹⁷ In addition, Switzerland does not provide protection to asylum seekers coming from countries where gays and lesbians are prosecuted or even condemned to death, when this is used a reason for seeking asylum. The lack of equality of rights in the fields of adoption and family law is another important concern.

A spokesperson for the Pink Cross has referred to “rifts and loopholes in the laws” that do not protect the people concerned from discrimination, and which could be “easily fixed”.¹⁸ Similarly, LOS has complained that Switzerland is not implementing the respective recommendations of the UN Human Rights Council Universal Periodical Review regarding human rights. An ongoing concern of these communities is the denial of the right to raise children, which is inscribed in the Swiss constitution, Article 14.¹⁹ However, adoptions are still legally refused to LGBT people on the restrictive basis of the registered partnership law. In a ruling of the Federal Court in May 2011, the supreme judges denied adoption to a woman living in a registered partnership since 2007. In her claim, the plaintiff pointed to several legal prescriptions – such as the Swiss constitution, the European Convention on Human Rights as well as the UN Convention on the Rights of the Child²⁰ – without success.²¹ However,

observers noted that the Federal Court had focused on very formal aspects of the law only, while not considering the broader context. The plaintiff can only appeal to the European Court of Human Rights (ECHR) where similar cases are pending. A similar situation occurred at the parliamentary level in Switzerland: two motions (a common instrument in the Swiss parliament) were submitted years ago, one demanding the introduction of stepchild adoptions for same-sex couples (Motion Fehr), the other the general abolition of adoption restrictions for registered partnerships (Motion Prelicz-Huber). The Federal Council (the Swiss government) has however indicated its disagreement and sees no need to revise the relevant article of the registered partnership law.

Such special and complex cases usually do not get much attention from the broader public and the national media. To them the issue concerns a minority of Swiss people. As long as LGBT minorities (and other minorities for that matter) are not making themselves too visible in public, they do not mind. Tolerance is usually linked to good behaviour in public – what people do in their private sphere and behind closed doors is considered none of their neighbours’ business. Despite these unwritten rules and social norms, a change of culture can be observed compared to the more bigoted 1970s and 1980s – even in a conservative and tradition-minded society like Switzerland. Nevertheless, the fact remains that LGBT people have to live and face all sorts of discrimination in their day-to-day life, most of it outside of the public’s perception.

A bishop out of control

Summer 2015 somehow exemplified the diverse realities and contradictions in Switzerland when it comes to sexual rights. At the beginning of August, the foremost tabloid daily *Blick*²² surprised the public with a tale of rampant homophobia. Vitus Huonder, the Catholic Bishop of Chur (a stronghold of religious fundamentalism in the east of Switzerland), elaborated on his beliefs and convictions during a church gathering dedicated to “delighting in faith” in Fulda, Germany (another stronghold of religious fundamentalism way up in the north). In his speech the bishop argued for “real” Catholic values, which he said were against abnormalities such as progressive ideas of sexual orientation, gay marriage, divorce and sexual education. While referring to his strict interpretation of the Bible – precisely two excerpts from the Book of Leviticus in the Old Testament – he called for severe consequences,

14 www.transgender-network.ch

15 www.humanrights.ch/en/service/swiss-human-rights-players/ma-z-details?detail=299

16 www.humanrights.ch/en/switzerland/internal-affairs/groups/gays-lesbians/internal-rights-gays-lesbians-bisexual-transgender-people

17 *Ibid.*

18 Human Rights for All, media release by LOS, the Pink Cross, the Umbrella Organisation for Rainbow Families and the Transgender Network Switzerland, April 2012 (in German). www.humanrights.ch/upload/pdf/120426_Medienmitteilung_LGBT.pdf

19 <https://www.admin.ch/ch/e/rs/1/101.en.pdf>

20 www.ohchr.org/en/professionalinterest/pages/crc.aspx

21 Bundesgericht bestätigt Adoptionsverbot für gleichgeschlechtliche Paare, Schweizerisches Kompetenzzentrum für Menschenrechte (SKMR), July 2011, www.skmr.ch/de/themenbereiche/geschlechterpolitik/artikel/bge_adoptionsverbot.html

22 www.blick.ch

including the death penalty.²³ Even worse, there was no murmuring of surprise in his congregation, but applause. The Pink Cross was “shocked and upset” about the statements and demanded a public apology from the bishop. Furthermore, the Pink Cross announced that it would consult lawyers to see if what the Bishop said amounted to hate speech, underlining that “no church representative lives in a legal vacuum.”²⁴

When confronted with media and consternated public responses to his statement, the bishop quickly talked about “misunderstandings” and said that he “didn’t mean it” – of course.²⁵ A few days later Catholic Church associations clearly distanced themselves from the bishop’s viewpoint and called it “irresponsible and cruel”, while referring to situations in some countries where “homosexuals are fearing for their lives, may be flayed, stoned or even killed.”²⁶ While organised Swiss Catholics expressed their outrage and their solidarity with the LGBT community, the Swiss Bishops Conference²⁷ pussyfooted around again and called their fellow minister “difficult”, underlining that “the church welcomes all people unconditionally, independent from their sexual orientation.”²⁸ Meanwhile, three law suits were filed by two individuals and the Pink Cross,²⁹ – the potential outcome of these actions hovering between uncertain or predictable. Within weeks, the Huonder case received so much public attention that more members of the church hierarchy publicly expressed their disagreement by admitting that “he crossed a red line.”³⁰

The reverse side

At the end of August 2015 – a month of contrasts indeed – the 24th Zurich Street Parade³¹ attracted

around a million people. The Street Parade became the most attended technoparade³² in Europe since the end of the Love Parade in 2010. Comparable to Berlin’s Love Parade, the Street Parade has, since 2001, been one of the largest techno parties in the world, and the largest annual event in Zurich.³³ Originally it was thought of as a demonstration for freedom, love and tolerance. As it became more and more commercially viable for the Swiss metropolis, the key messages of the festival became more and more diluted. Nevertheless, the Street Parade can be understood as a statement against the Swiss *Biedermeier* – the traditionalist’s world view – mobilising around one eighth of the Swiss population. For Swiss conservatives and religious fundamentalists it must look like an annual provocation and nightmare.

Conclusions

My conclusions on the issue of sexual rights in Switzerland are informed by personal experiences and references. Changes of norms, traditions, values, prejudices and stereotypes take time, and generations. During my study years in Heidelberg, Germany, I lived in a gay commune, the only “heterosexual” there. This was just as the German law that criminalised homosexuality in the early 1970s was being reconsidered (specifically paragraph 175 of the German Criminal Law).³⁴ Switzerland had officially abolished the criminalisation of homosexuality in 1942, provided that the actors involved were over 20 years of age.³⁵ Germany and Austria only followed decades later – Germany in 1994, and Austria in 2002.³⁶

In the early 1970s I had the privilege and honour to meet elderly people and gay friends who had survived German concentration camps between 1933 and 1945 (the Nazi period and barbarity). They had been accused of being “Jews”, “socialists”, “communists”, or “homosexuals”, or all together – usually a sure death verdict in Nazi Germany. From their testimonials I learned that being gay or sexually “irregular” was not considered “abnormal” in the educated and artist scenes in Berlin or Paris (leading metropolitan areas) up until the 1920s – in Germany until the takeover of Nazi power in 1933. The cultural impact of anti-gay and “abnormal sexual

23 Huonder quoted Leviticus 20:13: “If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.” www.blick.ch/news/schweiz/mit-dem-tod-bestaft-boese-schwulen-attacke-von-bischof-huonder-id4034615.html

24 www.blick.ch/news/schweiz/mit-dem-tod-bestaft-boese-schwulen-attacke-von-bischof-huonder-id4034615.html

25 www.blick.ch/news/schweiz/schwule-werden-mit-dem-tod-bestaft-bischof-huonder-hats-nicht-so-gemeint-id4035586.html

26 www.blick.ch/news/schweiz/es-reicht-jetzt-laufen-auch-die-kirchen-sturm-gegen-huonder-id4042198.html and www.kath.ch/medienspiegel/aeusserungen-von-bischof-huonder-zu-homosexualitaet/

27 The coordinating body of the Roman Catholic dioceses in Switzerland.

28 www.blick.ch/news/schweiz/dem-bischof-drohen-bis-zu-drei-jahre-knast-schwule-zeigen-vitus-huonder-an-id4054175.html and www.tagesanzeiger.ch/news/standard/schwulendachverband-zeigt-bischof-huonder-an/story/13408816

29 Ibid.

30 www.nzz.ch/zuerich/die-einsamkeit-des-vitus-huonder-1.18598133 and www.woz.ch/1533/katholische-kirche/jesus-machte-keinen-unterschied

31 www.streetparade.com

32 <https://en.wikipedia.org/wiki/Technoparade>

33 https://en.wikipedia.org/wiki/Street_Parade and www.tagesanzeiger.ch/29573065/print.html

34 https://en.wikipedia.org/wiki/Paragraph_175

35 https://de.wikipedia.org/wiki/Geschichte_der_LGBT#Das_20._Jahrhundert

36 Ibid.

orientation” campaigns must have been enormous across Europe until the 1970s.³⁷

But values and public perceptions have changed considerably over recent decades. Just as an example: the “coming out” of a homosexual person until the 1970s or 1980s usually had severe consequences for his or her professional life, career and economic existence. When the German minister of foreign affairs, Guido Westerwelle (2009-2013), came out as a homosexual living in a same-sex partnership, it was just an issue for the gossipy yellow press. Over the last 20 years the internet and social media have supported and illustrated sexual diversities by including marginal realities and identities. They have strengthened emancipatory processes of all those who have not always been the focus of old media. Discriminated groups who lived in the shade of societies and had no voice are all using the internet to express their sexual identities, to find support, and for advocacy.

Anti-LGBT propaganda campaigns are still mainly the work of religious fundamentalists from the Roman Catholic, orthodox or Islamist persuasions. Gay friends and observers who have struggled for multicultural rights in European societies for most of their political life confess that they are rattled and scared about recent developments. They say that for some time the fundamentalist Catholic fraction has been losing more and more influence in modern and educated Western societies. But recently we are confronted with a younger migrant generation with a Middle Eastern background who have strongly expressed and revitalised anti-gay stereotypes and propaganda by ignoring constitutional basics.³⁸ Their anti-modern ideas, merely based on religious bias, are considered a dangerous force against the rights of LGBT people, or anybody not corresponding to traditional or archaic norms.

Transformation processes in societies are usually not linear, but broken or interrupted by backlashes – as can be seen by the story of the bishop discussed above. Decades ago religious fundamentalists could have counted on the silent approval of the public, but nowadays these church representatives are seen more as a dying species. But there is still a long way to go – in Swiss society and abroad – until LGBT people are considered just as “normal” and equal as usual heterosexuals.

Action steps

Some of the demands of LGBT organisations are:

- To finally remove the exclusion of gay people from donating blood, allegedly because of higher risks of HIV transmission. The Pink Cross considers this practice discriminatory. The Federal Council already agreed and called upon blood services to change such rules.
- To introduce a particular anti-discrimination article to prohibit hate speech against LGBT people. More coherence between different legislation is needed.
- As the right to marriage is inscribed in the Federal Constitution, equal rights and standards for gays and lesbians are overdue. Similar demands for gay people to adopt children are still on the advocacy agenda (the revision of Article 28 of the registered partnership law is necessary).
- LGBT people are still confronted with discrimination at the workplace. Regulation is needed to stop and change these practices.
- LGBT communities and organisations should step out of their closed circles by creating broader alliances with like-minded citizens. They should use internet-based campaigning tools and platforms (such as Avaaz and Campact)³⁹ to mobilise solidarity. The internet offers this chance and opportunity.

³⁷ Various personal conversations with gay friends in the early 1970s, where they told me about their personal histories and sufferings. None of them wanted to record their personal stories in public because they were still afraid.

³⁸ Talks and discussions with people from the gay community who do not want to be personally quoted.

³⁹ <https://www.campact.de/gleichstellung/appell/empfehlen>

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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2015 Report

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