Fighting Domestic Violence - Switzerland

1. Legal provisions

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# Introduction

The aim of this overview is to provide a consolidated review of national domestic violence legislation and enforcement mechanisms in Switzerland and how these relate to the broader obligations under international legal frameworks, in particular the Council of Europe Convention on preventing and combating violence against women and domestic violence ("**Istanbul Convention**").

Switzerland has taken a number of positive steps to combat domestic violence. The Swiss Criminal Code was significantly amended in 2004 with the aim of simplifying and streamlining the prosecution of domestic violence. There are also a number of civil law provisions that are intended to further protect victims. Following the adoption of the Istanbul Convention in December 2017, Switzerland introduced further amendments to both its civil and criminal laws in order to bring the national legal framework more in line with the principles of the convention. There have also been a number of positive developments with respect to on-the-ground enforcement, including the establishment of specialized police units as well as an increase in reports and prosecutions.

Notwithstanding these positive developments in both the legislative and enforcement spheres, significant concerns still exist. For example, nongovernmental organizations (NGOs) continue to report that violence against women remains a serious problem in Switzerland. According to a report from NGO Amnesty International in 2019, one in five women and girls over the age of 16 have been subjected to sexual violence in Switzerland, and more than 10% of women and girls surveyed had been raped. Of those surveyed, only 8% reported the assault to the police.[1] NGOs have further raised concerns regarding increased demand for domestic violence services and shelters. Lastly, whereas the most recent amendments to Swiss law aimed to bring it in line with the requirements of the Istanbul Convention by streamlining legal procedures, it can be argued that the amendments do not yet go far enough to protect and support the victims of domestic violence.

**The status quo: overview of existing Swiss laws**

In Switzerland, the national law can be divided into the federal level and the cantonal[2] level of the individual states. Swiss domestic violence legislation is primarily governed at the federal level and is examined more closely below.

**1. Intervention measures — Swiss Criminal Code (Strafgesetzbuch, (StGB))**

Recent changes to Switzerland's criminal legislation shows a paradigm shift in society's attitude towards domestic violence. In order to protect victims of domestic violence, the private lives of individuals are no longer exempt from state intervention. This shift suggests that society has recognized the particularly serious nature of violence within marriage and partnerships.

In April 2004, the Swiss Criminal Code[3] was amended to expand the prosecution of domestic violence for individuals who are both in and not in relationships.

**Individuals in relationships**

The prosecution of domestic violence for individuals who are in relationships includes the prosecution of simple bodily harm,[4] repeated assault[5] and threats[6] that occur between spouses or registered partners during the marriage or partnership, or up to one year after the divorce or dissolution of the partnership. The same provisions apply to civil partnerships[7] for an indefinite period or up to one year after their separation. Before this change, the relevant offences were only prosecuted if the victim had filed a formal criminal complaint. Following the amendments to the Swiss Criminal Code on 1 April 2004, officials are obliged to prosecute if there are indications that domestic violence is occurring,[8] irrespective of whether the victim has filed a formal complaint. Indications could, for example, include reports from a neighbor who raises concerns. The amendments to the Swiss Criminal Code also mean that violence in intimate relationships can no longer be viewed as a "purely private matter."

Problematically and as highlighted by Amnesty International, however, certain offences of a sexual nature allow for penal leniency where the victim is a spouse or registered partner of the offender.[9] The potential for such penal dispensation may be construed as treating such offences in the context of domestic violence as being, as Amnesty International phrases, "lesser offence[s] than rape under Swiss law."[10]

**Individuals not in relationships**

Irrespective of relationship status, sexual assault and rape have always been prosecuted as official offences, albeit on the basis of force rather than consent. Offenders who commit sexual assault can receive a custodial sentence not exceeding 10 years or a monetary penalty. Offenders who commit rape may receive a custodial sentence of between one and 10 years. For both offences, if the offender acts with cruelty or uses a weapon or other dangerous object, there is a mandatory minimum custodial sentence of three years. As with those in relationships, officials are obliged to investigate cases where indications of such offences are present, even if a formal complaint has not been raised by the victim.

**2. Protective measures — Swiss Civil Code (Zivilgesetzbuch, (ZGB))**

Article 28b, paragraph 1, lit 1-3 of the Swiss Civil Code[11] contains a non-exhaustive list of protective measures to prevent the infringing person from the following:

approaching the plaintiff or coming within a certain radius of their home

staying in certain places, in particular certain streets, squares or neighborhoods

contacting the plaintiff in any way

If the victim lives with the offending person, the court can order the offending person to be removed from the home for a certain period of time. The law does not specify a time limit on these measures and leaves it to the court of first instance to prescribe a time-limit.

The court may also impose a compensation order on the plaintiff for exclusive use of the home.[12] This means that the plaintiff may be ordered to monetarily compensate the offending party for the duration of their forced time from the home. Given the causal link between poverty and the experience of domestic violence,[13] this provision is problematic as it might hinder victims from taking legal action against the offending partner by ostensibly punishing the victim.

**3. Support measures — Victims Support Act (Opferhilfegesetz, (OHG))**

In 2007, the Victims Support Act[14] entered into force. It obliges the Swiss cantons to provide counselling and information centers to victims. The definition of "victim" in the Victims Support Act has the same meaning as in the Swiss Criminal Code, i.e., it encompasses victims of all crimes including victims of domestic violence. It also allows family members of the victim to seek support. According to Article 2 OGH, the support may not be limited to counselling and emergency aid, but it must include financial relief and long-term support. Whether this financial relief could be used to offset the problematic compensation provision contained in the ZGB (i.e., a plaintiff must compensate the offending party for exclusive use of the home while the offending party has been removed by a court order) is unclear, but would merit further investigation.

**4. Integration and domestic violence — Foreign Nationals and Integration Act (Ausländer- und Integrationsgesetz, (AIG))**

The Foreign Nationals and Integration Act[15] regulates the entry and exit, residence and family reunification of foreign nationals in Switzerland. In addition, it regulates measures for encouraging their integration. Article 50(1)(a) and (b) AIG regulates the right to grant and renew the residence permit after the dissolution of a marriage[16] or family community.[17] One reason for a spouse and their children to be granted a residence permit and/or to have their residence permit extended is, among others, when"important personal reasons"make an extended residency in Switzerland necessary. Although and according to the Federal Supreme Court domestic violence committed by a spouse can be considered to be an important personal reason, the threshold for this exception is rather high. Only when the victim is "seriously in danger and the relationship has become unbearable" might it qualify as animportant personal reason.[18] The Swiss Federal Office for Gender Equality published a scientific report criticizing this decision. The report particularly states that "intensity" as a criteria could lead to the wrong assumption that domestic violence is primarily built on physical factors.[19]

 Moreover, Switzerland has expressly excluded Article 59 (which provides protection for domestic violence victims whose residence status depends on that of their partners) and Article 44, Paragraph 1(e) (which provides that a signatory will take necessary measures where an offence is committed by a person who has their habitual residence in their territory) of the Istanbul Convention,[20] providing further evidence that Switzerland is not yet ready to make sweeping reforms in this area.[21]

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