

What does the law say about racism?

Switzerland does not have a specific law against racism and discrimination. On the other hand, Switzerland prohibits discrimination in its Constitution and in criminal law. In private law (the Civil Code) there are a few articles that protect against racism and discrimination.

Use of the term “race”

The term “race” is often used in the law. For this reason, we also use the term “race” even if, in reality, human races do not exist. All human beings belong to one and the same species.

But in people’s minds and heads, the idea of “races” still exists.

This is a social construct. Racial discrimination is based on this idea:

people are not equal to each other because of their “race”. Even if human races do not exist.

The Federal Constitution

The Federal Constitution is the most important Swiss law. The Federal Constitution defines the main rules of the state. It also guarantees the fundamental rights of individuals in dealing with Switzerland and its authorities.

What is written in the Constitution (the main rules and freedoms) does not concern people’s relations with each other. It only concerns people’s relations with the state.

The Constitution protects people from abuse or injustice by the state.

The Federal Constitution (Cst.) states that all human beings are equal before the law (Art. 8, para. 1).

Paragraph 2 of the same article stipulates that no one may be discriminated against on grounds such as origin, “race,” language, way of life or religious beliefs.

The Criminal Code and Article 261 bis

The Criminal Code is a federal regulation.

It defines acts that are unacceptable in our society. It provides for penalties for such acts.

Inciting other people to hatred and discrimination is unacceptable.

The Criminal Code (CC) prohibits this. It punishes:

- people who incite others to hatred or discrimination against a person or group of persons because of their physical appearance (skin colour), origin, religion or sexual orientation
- people who publicly express racist ideas about a person or group of persons
- people who publicly demean or discriminate against a person or a group of persons because of their physical appearance (skin colour), origin, religion or sexual orientation
- people who say publicly that genocide (the extermination of certain peoples) did not take place, or is not so serious.
- people who refuse to provide services or goods to a person or group of people because of their physical appearance (skin colour), origin, religion or sexual orientation. While these services and goods are for everyone.

Such acts are prohibited only if they are committed in public. This means only if the people present do not really know each other.

To punish such acts, the sanction may be a fine (money) or sometimes a prison sentence of up to three years.

If you are a victim or witness of racism, what should you do?

Anyone who is a victim or witness of such acts prohibited by law may report them to the nearest police station. They may also notify the public prosecutor or an examining magistrate in writing.

The authorities will then investigate the facts of the matter. If these involve Article 261bis of the Criminal Code, the courts prosecute the perpetrators directly (ex officio prosecution).

The Civil Code

The Civil Code defines the rules of relations between persons. It establishes the rights and duties of each individual.

For example, the Civil Code regulates family relationships, inheritance and various contracts: employment, sales, rental and service contracts.

The Civil Code provides for the protection of personality rights (Articles 28 of the Civil Code (CC) and 328 of the Code of Obligations (CO)).

What does protection of personality rights mean?

For the Civil Code, protection of personality rights means, for example, protection of a person's life, respect for their body, protection of their honour and privacy, and other elements important to the personality.

Has a racist act attacked a person's personality rights? Then they have the right to take the perpetrator to court. They may also seek redress.

An international convention against racial discrimination

Like other countries, Switzerland has signed the International Convention on the Elimination of All Forms of Racial Discrimination. By signing the Convention, countries undertake to eliminate all forms of racial discrimination in their countries.

They also commit to fostering understanding between groups of people and between "races".

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Countries that have signed this Convention are required to write regular reports. They must present to the Committee on the Elimination of Racial Discrimination what they are doing to eliminate racial discrimination in their countries.

Switzerland has signed the Convention. It too has to write these reports.

If a person or group of persons is a victim of racism and have tried all means of redress in Switzerland without success, they may apply to the Committee on the Elimination of Racial Discrimination.

The Committee then notifies the situation to the country concerned, without giving the name of the person.

Then the Committee sends a decision with recommendations and proposals to the country and the person concerned. This makes the country and people aware of the reality of racism. The country concerned is not obliged to follow these recommendations. But the courts use them to make legal decisions.

Court decisions as examples

It is important to know and compile court decisions on discrimination. They serve as examples for new situations. We are talking about jurisprudence.

In Switzerland, the Federal Commission against Racism records court decisions on its website.

Caritas Suisse Info-racisme (Caritas Switzerland Racism Information) also presents court decisions. They summaries and classify them into categories such as the world of work, social networks and media, school and religion.

Additional information (links, addresses, information sheets, brochures)

www.bonjour-jura.ch/en/racism-and-discrimination/what-does-the-law-say-about-racism