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Contribution on Theme 2:
Rights of asylum seekers

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ASYLUM SEEKERS IN SWITZERLAND AND THE ACTIVITIES OF THE FEDERAL COMMISSION AGAINST RACISM

Introduction

Like most European countries, since the 1990s, Switzerland has had to deal with thousands of requests for asylum each year, not counting those arising from emergency situations, like during the wars in the Balkans. Today, Switzerland receives about 5% of requests in Europe, compared to 6% in Belgium, 3% in Denmark and 21% in Germany, that is to say, in round figures, some 25,000 requests. Approximately 10% of these requests are granted in a formal manner and another 10% can be added for those who are granted provisional and humanitarian asylum.

Over the last two years, an increase in the number of requests has been noted in a number of countries, including Switzerland (24%), and a clear decrease in some others (Denmark, the Netherlands, in particular) without any real indication as to whether this is a result of the tightening-up of asylum legislation in these countries.

Because Switzerland too, has for a long time, tended to accentuate the austerity of its law reforms and of federal orders as well as their application at local authority level.

For this, there are two main reasons:

On the one hand, as a non-member State of the European Union and not being an applicant State in the near future, Switzerland fears that it might suffer the consequences of what it sees as “underbidding”, by appearing as a country too favourable to asylum.

On the other hand, for over ten years, the authorities have been under pressure from a section of the public led by a populist party which, being able to resort to methods of direct democracy, regularly submits official policy to the popular vote.

This will again be the case on 24 November of this year. And according to the polls, the vote will, in any event, result in a hardening of legislation with regard to most provisions on asylum:

Introduction of the “safe third country concept”; time limit of 5 days for an appeal; accelerated expulsions, decrease in social benefits, other benefits, prolonged bans from working, etc.

2. Links between the problem of refugees and the fight against racism, xenophobia and intolerance in general

Since the World Conference against Racism in Durban (WCAR), immigrants, refugees and asylum seekers are considered as vulnerable groups and are protected by the UN international Convention against racism.

This is explicitly highlighted in the Durban Declaration (paragraphs 46-55) and in the Programme of Action (paragraphs 24-36).
That has not always been the case, even if it can be said that the Council of Europe, and ECRI in particular, have shown the way.

Within the global debate, a qualitative jump needed to be made on the theoretical level by admitting from now on that the administrative status can form a discrimination similar to racism in the same way as ethnicity, colour and religion. With the results of the WCAR, the traditional definition of racism founded on unchanging characteristics, innate or almost innate, has been exceeded, by now including contemporary forms of discrimination such as the concept of multiple discrimination. This same reasoning is also valid for other categories of nonnationals such as illegal immigrants.

The deterioration of the social and political climate with regard to refugee and immigrant populations in Europe, but also elsewhere in the world, the rise of xenophobia and intolerance, the violence to which these populations are exposed, the role of scapegoat which is attributed to them within the population or by institutions – all these make up the register of racism, hatred of others, rejection of anything different, and can be qualified as contemporary illustrations of racism.

Faced with this new and more serious wave of phenomena, from now on we take into account a new social perspective in the definition of racism in order to protect weaker groups and to give them the means of empowerment.

In the opinion of the FCR, this is progress which notably allows for a widening of the circle of institutions and actors concerned by questions of asylum and immigration and for it for more benefit to be drawn from the tools and remedies proposed by these bodies.

**The role of the FCR**

As surprising as it might seem, the problem of human rights is barely known in Switzerland and public discussion has only just begun on a subject which is identified mainly as one which belongs in the context of Swiss foreign policy.

At present, it can be said that there is no human rights culture within federal and cantonal institutions, nor in the judicial system, with some rare exceptions.

It must be noted that there is not a Swiss national human rights institution yet, but several specialist organisations operating at the federal level, each in its own field (foreigners, refugees, etc. divided up according to a logic which makes it more difficult to defend human rights in practice.)

In the framework of its activities, however, the Federal Commission against Racism has been led to spend more and more time on the protection of human rights in general. This is partly explained by the transversal character (in the sense of “mainstreaming”) of the problematic situation of racism as well as a growing awareness of the importance of defending human rights in all fields.

This is why the FCR took the opportunity in Durban to include in its activities issues linked to discrimination affecting asylum seekers as well as other categories of nonnationals, thus acting in compliance with the numerous recommendations both from ECRI and from CERD.
4. Two examples illustrate recent interventions by the Commission in this field

“Welcome but excluded?”

Under this title, the FCR launched a study on the situation of persons benefiting from a provisional admission into Switzerland – the “F” permit.

This refers to persons who do not fulfill the conditions for asylum but whom, for various reasons, cannot be sent back to their home countries. This status was originally created to deal with the massive influx of nationals from the Balkans, a large number of which did in fact return to their home countries later on. It therefore allows for emergency situations to be dealt with by authorising an immediate reception of a large number of people.

With time, however, the lacuna of this system have become evident: not being formally recognised as refugees, as they were supposed to leave Switzerland as soon as possible, these persons do not benefit from any measures of integration linked to their status. Their situation is characterised by extreme precarity and living conditions, both material and psychological, which are often deplorable.

According to the FCR, it is important to know if the around 30,000 people concerned are discriminated against in their daily lives (employment, health, accomodation, in particular) because of their status. The FCR also intends to examine if there is unequal treatment within this population, as a result of their nationality or religion, for example.

These conditions brought together therefore seem to make this group into a particularly vulnerable category of society, living without future prospects and exposed to a spiral of social exclusion. To this can be added a lack of means of administrative and legal defence of persons who are very often exposed to stigmatisation and rejection.

This is why, the FCR considered that from the point of view of the rights of the human person, the situation was sufficiently worrying to justify an in-depth study on the subject with the aim of raising the awareness of the authorities and civil society.

Criminalisation and stigmatisation of black applicants for asylum

The deterioration of the political climate surrounding the issues of asylum is today particularly obvious with regard to black asylum seekers and refugees, most of whom are from a few countries of West Africa torn apart by latent wars and violence against the civil population. Recent cases, undisputable ones, linked to drug trafficking and involving networks using young asylum seekers have added to this tacit anti-black racism in Switzerland, affecting a population which is by definition “visible”, whatever their status, including Swiss nationals.

It should be pointed out here that the Commission has been carrying out in-depth work over the last two years with the Blacks of Switzerland on the racism experienced by this population in their daily lives. It seems that it was the first national institution, in Europe, to organise a national day of reflection on this theme.

In the particular case of young black drug traffickers, draconian measures to restore public order have been taken and have contributed to worsening the confusion among the public between colour of skin and criminality.
Police repression activities which have taken place in several large Swiss towns have notably taken the form of territorial bans, a legal measure which until now has very rarely been applied by the authorities; other measures like detention in camps or the setting of a local curfew have been envisaged in several municipalities.

In the same way as other federal authorities, the Federal Commission was worried about potential racist manifestations provoked by such measures, both from the police as well as from the public. Whilst admitting the need to fight drug trafficking, the FCR thus asked the cantonal authorities to launch, at the same time, public prevention campaigns against anti-black racism.

It also brought the attention of the judicial and police authorities to Recommendation Rec (2001)10 of the Committee of Ministers on the European Police Code of Ethics as well as to the need to respect human rights, in a more general way, including those of criminal offenders.

Finally, exceeding the framework of asylum, the FCR considered that the situation of the some 35,000 black persons in Switzerland justified, here too, a study, centred on the subjective experience of racism, independent of considerations linked to the status of the persons concerned.

In the medium term, the objective fixed by the Commission is to provide the black minority with the means to better deal with discrimination, to obtain full enjoyment of its rights, to benefit from a better quality of life in Switzerland. To this end, the FCR has regular contacts with various associations including the CRAN. However, it is a long and exacting job which must be carried out within the minority itself. At present, the degree of organisation within the latter is weak and only few reactions can be noted with regard to the problem of young asylum seekers from West Africa.

**Conclusion**

As a specialised national institution, we must note that the the field of asylum and that of immigration in general is that where institutional racism is the most evident in Switzerland.

There is a considerable number of persons living in situations of precarity, close to being in a situation where law is absent, left to the arbitrariness of some local, municipal or cantonal authorities, and up against opinions which are at best indifferent, at worst hostile, and in which the voice of defenders of human rights have little effect.

For its part, the Federal Commission against Racism has decided to intensify, in this domain, its awareness raising and preventive work in cooperation with civil society and all authorities concerned.