

## **Switzerland 2024**

### **Information from: Swiss National Human Rights Institution**

## **Independence, effectiveness and establishment of NHRIs**

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### **International accreditation status and SCA recommendations**

At present, Switzerland does not have an internationally accredited National Human Rights Institution. However, the Swiss Human Rights Institution (SHRI) was formally established in May 2023, with the goal of becoming the Swiss NHRI. To date, it has approved its statutes and elected its first Board of Directors. Its Secretariat has been operational since February 2024; by the end of the year, the recruitment of staff will be completed.

In August 2022, ENNHRI released a statement calling on relevant authorities to ensure adequate resources to the SHRI, as required by the UN Paris Principles and reflecting the concerns of Swiss NGOs.

In 2023, the SHRI became a member of ENNHRI, signaling its intention to work towards accreditation in full compliance with the Paris Principles. ENNHRI stands ready to further provide information to the SHRI and any relevant authorities on NHRI standards and the accreditation process.

### **NHRI enabling and safe environment**

There is no form of intimidation or hostility from the side of the administration. The main source of concern however is budget; our budget has been extremely limited from the start (1 Mil CHF from the Federation and 300000 CHF from the Cantons) and it has been cut further by the federal administration due to a budget crisis of the federation itself. It will also be very difficult to overcome this situation of insufficient funding. The funding is organized thus that it might be very difficult to improve it incrementally, given that additional budget from the same federal source would most likely crowd out funding of international cooperation and that funding from other federal sources would run-up against the principle of single-source funding.

### **NHRI's recommendations to national and regional authorities**

- Grant substantially better funding.
- Allow for a greater variety of sources of public funding (not just from one Ministry for instance).
- Less interference on a micro level, regarding procedural questions (such as interference with the formalities of invitations, the linguistic representation within the board of directors or the remuneration scheme).

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## Democracy - checks and balances, disinformation, and other topics

### Separation of powers

The most concerning developments in the short time we are in existence in this regard is the backlash against the verdicts of international human rights bodies, especially the backlash against the judgment on *KlimaSeniorinnen v. Schweiz*, which has widely been portrayed as an infringement with the Swiss (direct) democracy. The high watermark of this concerning development is an [appeal by the Parliament](#) to the Government to [issue a declaration that Switzerland regards this judgement as non-binding \(or is in accordance with it already\)](#). In general, an absolutist understanding of democracy as an end in itself and/or as by definition in accordance with human rights, is a rather widespread view in Switzerland, that has implications both for the separation of powers and for the protection of human rights.

### Enabling environment for civil society and human rights defenders

Our institution is too young for a substantial answer to that. However, it is safe to say that the notion of human rights defenders is rather underdeveloped in Switzerland and that this might be a meaningful field of intervention for the Swiss NHRI.

### NHRI's recommendations to national and regional authorities

- Insist on the importance of the independence of courts, especially

- international courts.
- Make it clear in daily public communication that (direct) democracy depends on an institutional framework of which human rights and an independent judiciary are integral parts.
  - Initiate reforms that allow for more constellations in which constitutional review of federal laws are possible (federal laws in Switzerland are exempt for constitutional review; however, there are constellations, e.g. when rights as guaranteed in the ECHR are on the line, when constitutional review is factually practiced. Without creating a fully-fledged constitutional court, it would be possible to extend such a constitutional review to further constellations; for instance, to constellations where subjective constitutional rights are in question).

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## Securitisations impact on the rule of law and human rights

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This is especially concerning with regard to counter-terrorism-legislation. In this field, the government has won a referendum with an extremely problematic law in 2021. The law is problematic in its extremely extensive definition of terrorism, its shift from a criminal procedure (with its procedural safeguards) to an administrative procedure and in its compatibility with Art. 5 ECHR, since it provides for a form of house-arrest that almost certainly amounts to a deprivation of freedom. A referendum regarding the gathering of intelligence which will be voted on this or next year. The concern with this proposal is that it will extend the possibility to gather data without an immediate indication of a security threat even further.

## NHRI's recommendations to national and regional authorities

- Allow for an independent review of state measures even in a highly securitized context (in a highly securitized context as in the prevention of terrorism, such remedies are absent in some cases).
- Refrain from any further shift of security relevant issues from a context of criminal law (and its procedural safeguards) to a context of administrative law (where such safeguards are much weaker and where notably a person can be in legal limbo for an unpredictable amount of

time).

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### **Implementation of European Courts' judgments**

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#### **NHRI's recommendations to national and regional authorities**

- Refrain from polemics against the European Court of Human Rights.
- Underline the necessity of human rights protection for democratic deliberation rather than the potential trade-off between the two.

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### **Other challenges to the rule of law and human rights**

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- Lack of comprehensive legislation on discrimination
- Very limited constitutional review of federal laws

#### **NHRI's recommendations to national and regional authorities**

- Initiate reforms that allow for more constellations in which constitutional review of federal laws are possible.
- Reform the appointment of federal judges, especially regarding their re-election into office with a view to enhancing their independence (as of today, individuals aspiring for a position as a federal judge factually have to be members of a political party to have a chance of being elected; what's more, they face periodic re-election and therefore the

risk of political pressure; a remedy for this would be fixed one-time terms of service).

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