

Papers

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In Europe but not necessarily of it:

Switzerland, queer refugees, and Amnesty International

Michael Dreyer and Jonathan Gibbs¹

In a referendum on June 5, 2005, Swiss voters were asked to decide two issues, and they approved both of them. With 54.6 percent of the vote, Switzerland joined the Dublin and Schengen accords of the European Union. And 58 percent of voters granted same-sex couples the right to register their partnership. Both decisions are relevant to the topic at hand. Yet before addressing LGBT² refugees in Switzerland, some background is necessary in order to understand the Swiss context. We will first look at asylum in Switzerland in general terms, followed by a brief discussion of the changes brought about by the Dublin agreement. Then, we will touch on the Swiss attitudes toward LGBT people regardless of their origin, before finally turning to the immediate plight of queer refugees, and the means to support them.

1. Federalism and asylum – some Swiss peculiarities

Switzerland is a peculiar country in certain aspects. Casual news readers would be excused for the perception that xenophobia is one of the main attributes of the Swiss population. Yet the country has one of Europe's highest proportions of residents with a migration background (30 percent).³

Compared with the huge number of foreigners living in Switzerland, the number of asylum seekers is much less prominent, and the number of queer refugees is almost negligible. In 2008 there were about 41,000 asylum-seekers in the country.⁴ And the grand total of openly queer refugees between 1993 and 2005 was a combined number of all of 90 cases over those 13 years.⁵

The officially stated goal of Swiss immigrant integration policy is to ensure that everyone can “live together peacefully and to offer equal opportunities to all”. Due to the special nature of Swiss federalism, not just the federal level is involved in this. The cantons and municipalities

¹ The authors are affiliated with Friedrich Schiller University Jena (Dreyer) and Queeramnesty (Gibbs). The views expressed in this draft are their own and should not be attributed to these organizations. The authors welcome, however, comments and feedback at michael.dreyer@uni-jena.de and gibbs.jon.low@googlemail.com.

² The authors will use the terms “gay”, “LGBT” and “queer” interchangeably in this paper, mostly for stylistic variety. They are aware of the problematic aspects of this usage.

³ In 2010 there were 1.76 million people with a migration background in Switzerland, i.e. about 30%. Of those, 20.5% had a foreign passport, 9.1% were naturalized Swiss citizens, and 1% were born as Swiss citizens.

⁴ <http://www.bfm.admin.ch/content/dam/data/migration/statistik/asylstatistik/uebersichten/asyl-jahre-total-d.pdf> (accessed September 2, 2011). All general numbers on asylum-seekers are derived from this source.

⁵ Thomas Stephens, Gay asylum seekers receive legal knock-back, [swissinfo.ch](http://www.swissinfo.ch/eng/politics/foreign_affairs/Gay_asylum_seekers_receive_legal_knock-back.html?cld=8403758), March 4, 2011 (http://www.swissinfo.ch/eng/politics/foreign_affairs/Gay_asylum_seekers_receive_legal_knock-back.html?cld=8403758, accessed July 25, 2011).

have a huge role as well. There are significant differences in cantonal regulations which make it important for the refugees to which canton they are assigned. And some cantons are certainly “gay-friendlier” and “foreigner-friendlier”, in general, than others. The Federal Office for Migration (“Bundesamt für Migration”) works closely with cantonal and communal authorities, who implement migration and asylum policies at their level. If successful, the asylum-seeker will be issued a “B-permit”, which allows him or her residency in one canton. After (normally) five years this is upgraded to a “C-permit”, which allows residency anywhere in Switzerland.

Yet even a negative decision by the Federal Office does not automatically always result in the immediate return to the home country. There is another possibility, namely “temporary admission”. The Federal Office defines this as follows:

“Asylum seekers whose applications have been rejected, but who cannot return to their country, can obtain temporary admission to Switzerland. Temporary admission is granted if expulsion is unreasonable (e.g. due to war or risk of serious personal emergency situation), inadmissible (violation of the European Convention on Human Rights), impossible (the journey back is not possible for technical reasons).”⁶

These are exceptions that apply to LGBT asylum-seekers in Switzerland as well, and, together with partnerships, they seem to be the most common ways in which these asylum-seekers may remain in the country legally. The rate of positive decisions granting asylum outright for those claiming homophobic persecution in their home country is even more dismal than the overall rate for all asylum-seekers.

2. Switzerland and Dublin II

Since the Revised Asylum Act of 2007, Switzerland has been implementing the Dublin II regulations. The Dublin II criteria require all asylum-seekers to apply for asylum in the first “safe state” they enter and ban double applications or “asylum shopping”; the member states must determine which state is responsible in accordance with these rules. Given that Switzerland is land-locked and completely surrounded by “safe states”, the number of asylum-seekers entitled to apply for asylum in Switzerland would theoretically drop to zero upon complete and perfect Dublin implementation. However, this has not happened; a lot of refugees get to – and stay in – Switzerland despite Dublin. Still, the number has dropped significantly. During the early 2000s there were roughly 20,000 or more asylum-seekers every year, whereas in the second half of the decade that number dropped by a quarter to roughly 15,000 per annum.

Queer refugees need to prove their homosexuality to the satisfaction of the authorities. The practice of this necessity is less onerous than in some other European countries (e.g. the Czech Republic), but there are still some special problems. A huge element is the typical lack of trust in the authorities on part of the refugees, which can lead to lies on the asylum application. Instead of admitting to persecution due to sexual orientation, which would amount to coming out right on arrival to foreign authorities in a foreign language and under strange circumstances, possibly even with a homophobic translator from one’s own country present, a number of refugees decide to invent general political reasons for their flight or to stick solely to actual persecution they suffered due to political activities without adding their risk and fears faced – and possible additional persecution suffered – because of homophobia. Invented stories can, in particular, pose huge problems during later stages of the process.

⁶ <http://www.ch.ch/schweiz/00157/00176/index.html?lang=en> (accessed September 2, 2011).

3. Being LGBT in Switzerland

The general legal situation for LGBT people in Switzerland is fairly positive. The legalization of male homosexuality was achieved back in 1942; the earliest date for any German-speaking country. In 1999 sexual orientation (or rather the more general term “Lebensform” i.e. lifestyle) became part of Art. 8 of the Swiss constitution, which outlaws discrimination based on a wide variety of characteristics. And in 2007, the “partnership act” took effect with its registered same-sex partnership offering almost all the benefits of traditional marriage. It should be noted that this was achieved not by an act of parliament or by the courts, but rather by the referendum of 2005 mentioned above. Switzerland thus became the first country on earth to legally recognize same-sex relationships by a majority vote of the people.

All of this amounts to the fact that for a gay person or for a gay refugee there are much worse destinations in the world and even in surrounding countries than Switzerland. Is the Confoederatio Helvetica, therefore, a welcoming safe haven for queer refugees?

4. Safe haven or ice-cold mountain? LGBT refugees in Switzerland

4.1 Swiss asylum law and statistics

We have to deal with a most disingenuous paradox: Switzerland has a huge number of foreigners in its Federation, and it has very welcoming attitudes toward homosexuality. However, there is not yet any formally explicit acceptance of homophobia-based persecution as a reason for asylum.

This is not for a lack of effort on the part of Swiss human rights and gay organizations like Amnesty International, Pink Cross, and Lesbian Organization of Switzerland (LOS). Attempts to get queer refugees explicitly recognized as a “particular social group” within the meaning of the 1951 Geneva Refugee Convention, e.g. support for the motion discussed below, have failed. Still, the general definition of a refugee by the Swiss Federal Office for Migration is remarkable:

“A refugee is a person who in their native country or in the country of last residence is subject to serious disadvantages or has a well-founded fear of being exposed to serious disadvantages for reasons of race, religion, nationality, membership of a particular social group or political opinion.”

Serious disadvantage is defined as a “threat to life, physical integrity or freedom as well as measures exerting unbearable psychological pressure. Flight motives specific to women are taken into account.”

Note the phrase “serious disadvantage”, which theoretically is more lenient than the word “persecution” of the 1951 Geneva Convention.

And yet, in March 2010, the lower house of the Swiss parliament (“Nationalrat”) rejected, by a vote of 125 to 64, the attempt to give flight motives specific to queer refugees the same status that motives specific to women already enjoy. The motion came from the Green party, and was backed by the Social Democrats. All other major parties and the Swiss government rejected it, arguing that it was unnecessary since the current legislation already sufficiently protected gay refugees. The proponents argued in vain that awareness of the special and systematic situation of those refugees would be enhanced at the Federal Office for Migration and at the Federal Administrative Court – and that both institutions were in dire need of this added awareness.

Conservative politicians, on the other hand, argued differently. Hans Fehr, a deputy for the xenophobic right-wing Swiss People's Party, had this to contribute: "Hundreds of thousands of people could stream into the country as Switzerland would turn into an island of allegedly persecuted homosexuals."⁷ Note the inventive use of "allegedly" on top of everything else.

Is there a constant stream of queer refugees into Switzerland already? Between 1990 and 2005 there were overall 398,906 asylum seekers. Between 1999 and 2010 the number was 233,941, of whom asylum was granted to 24,389 people. This number does not include people who were allowed to stay in Switzerland despite their asylum claims being denied; by no means an insignificant number! By comparison, openly gay asylum seekers between 1993 and 2005 amounted to 90 individual cases, of which 4 persons were granted asylum. A deluge looks different from most people's perspective.

Why have there been so few cases? One major reason, the lack of trust on the part of refugees to reveal the true reason for their flight to Swiss migration officials, was mentioned above. The lack of explicit legal standing to count sexual orientation as a recognized means for achieving asylum status certainly also contributes to this low number.

Yet although relatively few in (known) number, queer refugees do come to Switzerland. Who supports them in the new country and in their quest to stay?

4.2 *Queeramnesty and Focus Refugees*

The main LGBT organization supporting queer refugees in Switzerland is Queeramnesty, the LGBT-focus group of the Swiss Section of Amnesty International,⁸ and more specifically its sub-group Focus Refugees. Queeramnesty was founded in the German-speaking part of Switzerland in 1997, with activists convening regularly in Zurich and Bern. A French-speaking sister group was founded in Geneva in 1999.

In 2010, Focus Refugees was involved in the cases of 9 persecuted persons in Switzerland; in 2011, it was 11 as of August. Before looking at how Focus Refugees volunteers support these refugees, the following overview⁹ of which countries they are from, their route to Switzerland, and how they found Focus Refugees should provide some background. Yet it should not be taken to indicate anything beyond its basis, i.e. solely those cases in which Focus Refugees has been involved. In particular, conclusions should not be drawn from it, given the small number of acknowledged refugees, no way of knowing how many queer refugees never come out at all and/or of whose cases Focus Refugees never becomes aware, a lack of documentation, and a lack of complete access to case documents.

The countries of origin of the queer refugees supported by Focus Refugees are, not surprisingly, mostly countries which have more or less severe punishments for male (if not also female) homosexuality in their books, sometimes even the death penalty. They include Kosovo (3 people), Uganda (2), Iran (2), Iraq (2), and Cameroon (1 plus 5 up to 2010), and one person from each of the following countries: Afghanistan, the Comoros, Ethiopia, Ghana, Jordan, Mali, Sierra Leone, Syria, Tunisia, and Turkey. It should be noted that all of these countries, except Jordan, Kosovo, Mali, and Turkey penalize homosexuality.

Access to Switzerland was gained via initial boat trips to Spain or Italy, or from Turkey through East European countries to Austria or Germany via train or lorry (e.g. hidden among goods), sometimes with the (very expensive) help of professional gangs specializing in travel to Europe. In some cases, refugees arrived at Zurich airport and were initially held in its

⁷ Stephens, Gay asylum seekers (as in note 5).

⁸ Cf. for this organization www.queeramnesty.ch.

⁹ Jonathan Gibbs wishes to thank Regula Ott for her helpful collaboration and contribution of information.

detention center. Queer refugees have been referred to Queeramnesty by a variety of persons and organizations, including Amnesty International Switzerland's headquarters in Berne, Zurich airport detention center officials, gay organizations, local refugee support organizations, the Red Cross, and in one case, a pastor. A significant number of refugees found out about Queeramnesty (sometimes after having first contacted other organizations such as HAZ or Pink Cross) thanks to their own, their friends', or asylum centre employees' internet research.

Activists are assigned in teams of two to individual refugees and act as their Swiss intermediaries. Refugees receive linguistic support as necessary in dealing with authorities, but also with the task of understanding practical and societal aspects of Switzerland and learning German. Moral support might consist in simply spending time together and listening to the difficult stories. Practical measures might pertain to issues such as work and housing. Psychological help might involve easing the fear of authorities, since some queer refugees may have only very limited knowledge regarding the wide acceptance of homosexuality in Europe – or may have arrived in Europe without any familiarity with the concept and possibility of asylum. A significant number of queer refugees may be suffering from psychological conditions, including depression or symptoms of post-traumatic stress due to their past. Although it may sound cynical, a depression can prove to be a blessing in disguise, since ongoing treatment for depression or other conditions may be recognized as a reason for them to stay in the country, even in cases where asylum itself has been denied.

A final aspect of Focus Refugees volunteers' support is the social help they afford to refugees. They are introduced to the gay scene and meet, usually for the first time in their life without fear and mortal danger, other queer people. This also allows them to rely less on a network of heterosexual compatriots, many of whom, though refugees themselves, share the homophobic attitudes of the countries they fled. The need to remain closeted in an environment determined exclusively by other asylum-seekers can be a huge problem for LGBT refugees, and social activities can be a way out of that particular strait-jacket. Involvement with the gay social scene can also lead to refugees getting romantically involved with Swiss citizens. The Swiss partnership law allows the non-Swiss and non-EU partners of Swiss citizens to stay in the country; a provision which has already helped some refugees avoid deportation.

4.3 Case studies

One of the presenters of this paper has worked extensively with a number of queer refugees from different countries and different backgrounds. While these refugees need to remain anonymous in this paper for obvious reasons, it should be emphasized that their individual fates run the whole gamut previously described.

Several of the refugees in these cases hid their sexual orientation, and thus the real reason for becoming a refugee, from Swiss authorities, at least at first. In one case, a refugee invented a political story due to fear of the interpreter, lack of knowledge that homophobic persecution could be a basis for asylum, and fear of Swiss authorities despite awareness that European societies are in general not homophobic. Roughly two years later, when he received a negative asylum decision, having gained more familiarity with Switzerland in the mean time and the support of Focus Refugees, he decided to finally come out – despite continuing fears! – and tell his true story in his appeal. In two of these cases, the persecution suffered was not primarily the work of the state, but rather of the victims' families that became violent when they found out about the sexual orientation of their relative. In cases such as these, the addition to the Swiss asylum law sought in 2010 would clearly be very helpful; although (literally!) murderous intentions on the part of your own family do not rise to the level of

systematic state persecution, they can be just as lethal, if not more so. This clearly constitutes a “flight motive specific to queers” that should be “taken into account”.

5. Wrapping it up – and looking into the future

This has been a very brief overview of general points regarding asylum in Switzerland and Dublin, of what LGBT refugees encounter in Switzerland, and of attempts to make their plight more bearable, empower them with knowledge and resources, coordinate various aspects of their case, and help them achieve permanent residency and successful integration. Upon comparison with other European countries, certain points discussed here would certainly emerge as unique to Switzerland while at the same time, a number of similarities would also become clear.

In addition to such comparisons, an ultimate goal here would be to develop a political to-do list for activists. Such a list could include preparing and compiling well researched documents on the queer refugees’ countries of origin as well as developing discussion and sensitization points to share with federal and local-level Swiss government employees. Discussion could be launched on, for example, the issue of whether it is acceptable for the Federal Office for Migration to issue a deportation order sending a queer refugee back to their home country to live in a city other than their home town (where they are known as queer and persecuted accordingly), on the justification that there is an underground queer scene in that city. Sensitization could take the form of training courses for officials who interview refugees and government social workers assigned to their cases. Such courses are in fact already being planned by Queeramnesty with the Federal Office for Migration, hopefully ensuring that understanding for the special needs of queer refugees will in time reach the level of Switzerland’s generally quite affirmative attitude towards homosexuality.