

Swiss court upholds a suspended eight-month prison sentence in a FGM case in 2019

By Willy Fautré

HRWF (10.05.2019) - On 11 February 2019, the Swiss Federal Court, the nation's highest court, confirmed the eight-month suspended jail sentence of a Somali woman, who had her two daughters excised in her homeland in 2013 before immigrating to Switzerland in November 2015, through the family reunification framework. The case was initiated against the mother in Switzerland by the daughters' Somali father who had been living there since 2008.

The two daughters were excised at two different times: spring and September 2013.¹

The mother was first found guilty by the Police Court of Littoral and Val-de-Travers (Canton of Neuchâtel) on 12 July 2018 and received a suspended eight-month jail sentence with two-year probation.² She appealed the decision, arguing that the cutting occurred in the Somali capital Mogadishu at a time when she had no ties to Switzerland.³

On 14 December 2018, the Criminal Court in Neuchâtel rejected her appeal, arguing that FGM had been illegal in Switzerland since 2011 under Article 124 of the Swiss Criminal Code. The ban, that was tightened in 2012 by lawmakers to prevent people living in the country from taking their daughters abroad to be excised, applied in this case too, the court stated⁴. According to Swiss national news portal SRF⁵, Judge Nathalie Kocherhans said, "I do not think I can change things but perhaps this verdict will help eliminate the suffering of millions of girls."

*Art. 124:3. Assault / Female genital mutilation*⁶

Female genital mutilation

¹ Any person who mutilates the genitals of a female person, impairs their natural function seriously and permanently or damages them in some other way is liable to a custodial sentence not exceeding ten years or to a monetary penalty of no less than 180 daily penalty units.

² Any person who has committed the offence abroad but is now in Switzerland and is not extradited is liable to the foregoing penalties. Article 7 paragraphs 4 and 5 apply.

Source: <https://www.admin.ch/opc/en/classified-compilation/19370083/index.html#a124>

The Swiss Federal Court acknowledged that the mother, who is illiterate, was placed under considerable societal pressure to force her daughters to undergo female genital mutilation (FGM). The judge nevertheless deemed a prison sentence necessary. The appellant argued she was not aware that she had breached the Swiss law by having her

¹ Full judgment of the Federal Court

https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?lang=fr&type=show_document&highlight_docid=aza://11-02-2019-6B_77-2019&print=yes

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ <https://www.srf.ch/news/schweiz/bedingte-gefaengnisstrafe-erstes-schweizer-urteil-zu-genitalverstueummelungen>

⁶ Text in French at <https://www.admin.ch/opc/fr/official-compilation/2012/2575.pdf>

daughters excised before immigrating to Switzerland but the Federal Court argued that according to the law, "anyone who commits the crime abroad is also liable in Switzerland." The Court also contended that, although the Somali penal code did not contain any provision criminalizing FGM, the 2012 Somali constitution had banned FGM. In this regard, the Court also stressed that during the hearings the mother had declared she knew "excision is something wrong". "Despite her limited education level, she could have been aware that excision was not or not any more authorized in her country" the court decision stresses. Moreover, the fact that on two occasions she asked a person without any medical knowledge to excise her two daughters suggests she was aware of the clandestine and illegal character of her move. The Court also noted that "the appellant had not tried to get information from the authorities, what she could have done as she was living in the capital city of her country" and concluded that she could not have been unaware of the illegal nature of excision.⁷

Previous FGM proceedings

In November 2007, proceedings were opened concerning a case of female genital mutilation (FGM) in the canton of Zurich, which had been performed on a Somali girl 11 years earlier. It was the first case of its kind in Switzerland. The federal prosecutor invoked the offence of grievous bodily harm (Article 122 of the Swiss Criminal Code) in his lawsuit against the parents of a 13-year old Somalian girl.

Art. 122:3. Assault / Serious assault

3. Assault

Serious assault

Any person who intentionally inflicts a life-threatening injury on another,

any person who intentionally inflicts serious injury on the person, or on an important organ or limb of another, makes an important organ or limb unusable, makes another permanently unfit for work, infirm or mentally ill, or who disfigures the face of another badly and permanently,

any person who intentionally causes any other serious damage to the person or to the physical or mental health of another,

is liable to a custodial sentence of at least six months and no more than ten years.²

¹ Amended by No I of the FA of 23 June 1989, in force since 1 Jan. 1990 (AS **1989** 2449 2456; BBI **1985** II 1009).

² Penalties revised by No II 1 of the FA of 19 June 2015 (Amendment to the Law on Criminal Sanctions), in force since 1 Jan. 2018 (AS **2016 1249**; BBI **2012 4721**).

The tutelage office filed the complaint based on a medical report, which automatically set in motion an official investigation. The parents were put under custody during the investigation period. The person who carried out the excision could not be identified.

⁷ Full judgment of the Federal Court

https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?lang=fr&type=show_document&highlight_docid=aza://11-02-2019-6B_77-2019&print=yes

The *Neue Zürcher Zeitung* which revealed the facts⁸ mentioned that there had previously been another case in Geneva where a girl had been taken to Africa for her excision.⁹

In 2008, a couple of Somalis, parents of eight children born in Switzerland, who arrived in 1993 as asylum seekers, were convicted for FGM (type Ib, removal of the clitoris) of their elder daughter in 1996, aged two when she was cut. It was performed by a Somali physician who was temporarily in Switzerland. He was paid 250 Swiss francs and performed the procedure under local anaesthesia on the kitchen table. No post-surgical complications followed.

The cutting was desired by the mother. The father was against the complete removal of his daughter's external genitalia, arguing for a symbolic intervention. Therefore, they both agreed on (only) the removal of the clitoris. During an interview with the media, the father declared that, at that time, it felt 'normal' to them to let their daughter be cut.

The parents received a two-year suspended prison sentence by the Cantonal Court of Zurich for having encouraged FGM.¹⁰

Until Article 124 was added to the Criminal Code in 2012, only two cases of female genital mutilation (infibulation and excision) were prosecuted on the basis of Article 122.

About the anti-FGM legislation

Maria Roth Bernasconi, a member of the Socialist Party and of the National Council, was the catalyst for the Swiss government's involvement in the issue of female genital mutilation. Her fight against FGM started with a parliamentary initiative in 2005.¹¹ After years of debates about the possible criminalization of FGM, the Swiss Senate agreed in June 2011 to ask the government to amend the criminal law on this practice. On 30 September 2011, the National Council and the Council of State both agreed in their final votes to a ban and to an amendment of the Swiss Criminal Code by adding a new article: Article 124.¹² It entered into force on 1 July 2012.

The statutory period of limitation shall generally be 15 years. If victims are under 16 years of age, prosecution shall be possible to at least up to the age of 25.¹³

More reading:

<https://www.thelocal.ch/20180716/somali-mother-first-to-be-sentenced-under-new-law-in-switzerland-for-genital-mutilation-of-daughters>

<https://www.reuters.com/article/us-swiss-fgm-africa/swiss-court-upholds-sentence-in-genital-mutilation-case-idUSKCN1QB1IU>

⁸ https://www.humanrights.ch/cms/upload/pdf/071117_NZZ_beschneidung.pdf

⁹ <https://www.nzz.ch/articleec4ai-1.53958>

¹⁰ <https://www.swissinfo.ch/eng/first-court-case-of-genital-mutilation/6256146>

¹¹ <https://www.sante-sexuelle.ch/fr/nos-activites/droits-sexuels/mutilations-genitales-feminines-fgm/>

¹² <https://www.sante-sexuelle.ch/fr/nos-activites/droits-sexuels/mutilations-genitales-feminines-fgm/>

¹³ <https://www.humanrights.ch/en/switzerland/internal-affairs/violence/fgm/swiss-parliament-explicit-ban-genital-mutilation>

<https://www.srf.ch/news/schweiz/bedingte-gefaengnisstrafe-erstes-schweizer-urteil-zu-genitalverstuemmelungen>

<https://www.figo.org/news/switzerland-cracks-down-female-genital-mutilation-0012634>

<https://www.female-genital-cutting.ch/network/female-genital-cutting/situation-in-switzerland/>

<https://www.humanrights.ch/en/switzerland/internal-affairs/groups/children/criminal-procedure-fgm-switzerland>

https://www.humanrights.ch/cms/upload/pdf/071117_NZZ_beschneidung.pdf