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## Interview with Professor Camille Perrier Depeursinge on the new sexual offenses articles in Switzerland, effective July 1, 2024



**Discover our interview with Prof. Dr. Camille Perrier Depeursinge, a full professor at the Center for Criminal Law at the University of Lausanne, Director of the School of Law, Vice-Dean of the Faculty, and President of the Association for Restorative Justice in Switzerland ([AJURES](#)), which promotes and implements restorative justice processes in French-speaking Switzerland.**

A recognized expert in the field of sexual offenses, Professor Perrier Depeursinge has published numerous articles and books on the subject and co-leads a research project of the Swiss National Science Foundation on sexual violence in the Church. In this interview, she shares her perspectives on the recent revision of Swiss criminal law regarding sexual offenses, highlighting the main changes such as the desexualization of the crime of rape and the removal of the coercion requirement. She also discusses the importance of recognizing the state of shock in victims as an implicit "no" and the challenges this poses in terms of proof.

Professor Perrier Depeursinge compares the new Swiss legislation with sexual assault laws in other European countries and expresses her opinion on the possibility of adopting the "yes means yes" principle in the future. She also analyzes the need for specific classifications in the Penal Code, such as sanctions for revenge porn and "stealthing," as well as the impact of these provisions on modern society.

Finally, she explores the ongoing challenges victims face in judicial procedures, despite legislative reforms, and suggests ways to overcome these obstacles. With her extensive academic and professional experience, Professor Perrier Depeursinge offers invaluable insights into the advances, challenges, and future perspectives in the fight against sexual offenses in Switzerland.

(This is the English translation of the interview conducted in French)

**1. What is your opinion on the recent revision of Swiss criminal law regarding sexual offenses? What changes do you consider the most significant?**

The most significant changes are the desexualization of the crime of rape, which now allows anyone—not just women—to be a victim, and the removal of the coercion requirement, which better reflects the reality of sexual assaults. Often, the perpetrator does not need to use force or threats, as the victim, under the effect of fear, becomes immobile and unable to defend him or herself.

**2. How does the new Swiss legislation compare to the sexual assault laws in other European countries?**

By choosing to criminalize sexual acts committed "against the will" of the victim or by taking advantage of their "state of shock," Switzerland has taken an important step in the right direction. However, like other countries such as Spain, Sweden, or Belgium, Switzerland could also have criminalized acts committed "without the consent" of the victim. This would have been a clearer way to comply with the requirements of the Istanbul Convention.

**3. Regarding the crime of rape under Article 190 of the Swiss Penal Code, how does the adopted "no means no" principle concretely change the situation for victims?**

Before the revision, many victims were discouraged from seeking justice because, although they had clearly indicated they did not want to engage in sexual activity, their assailant did not need to use violence, threats, or other sufficiently intense psychological

pressures. Without coercion, there was no crime. Since July 1, 2024, sexual acts committed despite the victim's prior refusal can be prosecuted and punished.

**4. You have expressed a preference for the "yes means yes" principle. In your opinion, what would have been the advantages of this approach compared to the "no means no" principle that was adopted? In terms of evidence and judicial proceedings, how could the "yes means yes" principle influence the evaluation of consent by the courts compared to the "no means no" principle?**

The "yes means yes" principle would have the advantage of covering all situations where the victim did not consent to the act but was unable to express refusal—whether due to being deceived (the perpetrator impersonates someone else or commits a different act than the one for which consent was given), acting by surprise, or exploiting a position of hierarchical superiority, among other reasons. Currently, some of these situations are covered by other provisions, making it difficult to delineate the areas of application (sometimes with very different penalties). Additionally, some cases simply will not be criminally punishable, such as when a sports or dance coach convinces their victim that they must touch them for training purposes or when a superior exploits their position without a clear relationship of dependency.

**5. In terms of evaluation by the courts, the main problem will remain the proof of the perpetrator's intent: what did they understand based on the circumstances and what the victim was able to express?**

Regardless of the solution chosen by the legislator, the issue arises in the same way.

**6. Do you think that Swiss legislation could evolve in the future to adopt the "yes means yes" principle, as happened a few years ago in Spain?**

I think we could quickly interpret the text "against the will" as covering any situation where there is no consent. The Federal Court has already opened a door in this direction by stating that the behavior of someone who surreptitiously removes a condom during intercourse, without informing their partner, is manifestly "against the will" of the victim. This is also seen in the offense of home invasion (Article 186 of the Penal Code), where entering a home "against the will" of the rightful owner, even without an expressed contrary will, applies as long as one was not invited.

**7. Since July 1, 2024, the state of shock of victims, preventing the explicit expression of refusal, must be interpreted as an implicit "no." What challenges could this new consideration pose in terms of evidence during trials?**

The term "state of stunned shock" (in French "état de sidération") was used by the legislator without a real understanding of the phenomenon (in fact, its German translation is "state of shock" ["Schockzustand"]). The chain of neurological reactions triggered by a stressful situation (such as an attempted rape) varies among individuals and manifests with varying intensity. A victim may become paralyzed or simply lose strength, tense up, or conversely become limp, feel cold, or feel disconnected from their body. The courts will need to understand the varied nature of these reactions, determine if they align with what the legislator intended by "state of shock" in the case at hand, and then establish if the perpetrator took advantage of it—whether they at least suspected that it was due to this diminished capacity to react that they were able to commit a sexual act on the victim.

**8. Does the new law sufficiently improve the protection of victims, or do you still see gaps to fill? What are the main obstacles to the effective implementation of the new legislation on sexual offenses? What are the major challenges victims face in judicial proceedings, despite legislative reforms, and how could these be overcome?**

It's an improvement, but the issue of proof remains a challenge, and we will surely encounter situations where it will be questioned whether the victim was "sufficiently traumatized" to admit or not the state of shock. As is done today with Article 191 of the Penal Code, where its application is admitted only if the victim was sufficiently intoxicated... A definition of sexual assault as any sexual act committed without consent, leaving it to the courts to develop this notion and the criteria for applying it, would have been, in my opinion, more appropriate. The courts already do this very well in terms of consent in bodily harm in the sports or medical field; there is no reason why they cannot do so in sexual relations.

**9. Since July 1, 2024, the Swiss Penal Code explicitly sanctions revenge porn, which involves publishing pornographic content of a person to humiliate them by revealing their intimacy, whether the content was made with or without the person's consent, but disseminated without their consent. It also penalizes stealthing, which is the act of discreetly (without the partner's knowledge) removing a condom or not using one during consensual sexual activity (provided it was to be protected). Do you think it is necessary to create such specific offenses, as was the case with forced marriage (Article 181a of the Penal Code) or female genital mutilation (Article 124 of the Penal Code), when these behaviors could already be covered by existing criminal provisions? Is there a legal interest, or is it primarily for the general public, that certain behaviors are expressly classified as offenses?**

A small majority of the Swiss Parliament did not want a new offense based on consent. However, when the deputies in favor of this solution raised the risk that acts committed by deception or taking advantage of the state of shock would go unpunished, the legislator responded by adopting specific offenses, partly redundant with other existing legal provisions. This has generated many uncertainties, and I still wonder what sexual acts committed without the victim's consent the parliamentarians wanted to continue allowing... And I believe there is a real public interest in addressing behaviors that the use of information and communication technologies has normalized (harassment, violations of privacy, etc.). Today, there is a real sense of impunity for the perpetrators of these behaviors, with devastating results for the victims.

**10. In your opinion, how could the recent legislative reforms influence individual behavior and social norms around sexuality?**

I think there will be prevention and information campaigns launched in the cantons around the reform, and it is likely that these campaigns will focus their message on the need to ensure the consent of one's partner before engaging in sexual activity. In any case, I believe the public will understand that the threshold has been lowered and that there is less tolerance for sexual assaults.

**11. What is your vision for the future of legislation on sexual offenses in Switzerland, and what changes do you hope to see?**

In the short term, an interpretation of the terms "against the will" that encompasses all situations where the perpetrator suspects that the victim is not consenting. In the medium term, it is possible that the legislator will adapt the law in line with the courts.

**12. What research are you currently conducting or planning to conduct in the area of sexual offences and consent? Could you share some of your discoveries or hypotheses?**

With Justine Arnal, who is writing her thesis on the new definition of rape, without coercion, we have asked ourselves a lot about how to interpret the new law - what is meant by "penetration of the victim's body"? How do you prove the perpetrator's intent? What should be done if the victim is totally passive, but we are not sure whether she is in a "state of shock"? We have proposed a few avenues and elements of interpretation in the Swiss Criminal Review.

**13. How do you see the principles of restorative justice and penal mediation being applied in the context of the new criminal law provisions on sexual offences?**

Restorative justice attempts, both now and in the future, to meet the needs of victims of sexual assault by offering them a safe space. There, they can express their needs and, if they so wish, attempt a prepared discussion with their assailant, or even a meeting. I believe that the new provisions will clarify the status of victim for many people who were not sure whether they had been the victim of rape within the meaning of Swiss law, and this may lead them to seek answers from the authorities or elsewhere. In any case, Restorative Justice responds to needs other than those of judgement and punishment. It proposes forms of reparation, recognition and listening. It works on the relationship with others (relatives or the offender), in short, something that criminal justice does not do.

**14. As President of AJURES, what initiatives do you think associations and organisations should take to accompany the implementation of this new legal framework and support victims?**

There is so much that can be done to provide better support for victims of sexual assault - more availability for psychological support, more pro-activity for social procedures, better explanation of what is involved in criminal proceedings and better support during the process, setting up specialised support for minority populations (migrants, LGBTQIA+,

senior citizens, etc.), better training for professionals (lawyers, victim support workers, prosecutors, police officers, judges)... There is no shortage of challenges!

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