

Summary of the Urwyler case and why we in Switzerland urgently need to take action: (written U. Keller, 2. Sep. 2022)

Privatdozentin Dr. (medical) Natalie Urwyler is an anesthetist and emergency doctor. From an early age, she had aspired to an academic career in the field of anesthesia. Through her hard work, she created the conditions for such a career. After completing specialist training, she entered research. She was seen as a “young talent”, and won a prestigious scholarship from the Swiss National Science Foundation to complete a Research Fellowship at Stanford University in California in 2010/2011.

But after her return to Switzerland, obstacles arose. She had differences with her supervisor about the equality of women, their representation in management positions and the statutory protection of pregnant women and breastfeeding mothers. In 2013 she became a mother herself, but as a result was forbidden by her then supervisor from doing any further work in research and teaching. Dr. Urwyler lodged a formal complaint with the University of Bern. But this complaint led instead to her own termination, during her maternity leave.

Convinced that this was illegal, she challenged the termination in court in 2014. A lengthy, onerous and expensive court procedure ensued. The termination had effectively destroyed her career in anesthesia. She was unable to find a job in her chosen field at any other hospital - the field of anesthesia is small in a country the size of Switzerland. But she is a committed doctor, engaged in her profession with her heart and soul, and so she decided to start again. At the age of forty, she accepted employment as a resident in another specialty, setting her back 15 years on the career ladder. But with her great determination, she once again completed several years as an assistant doctor, initially in intensive care medicine and later in internal medicine, and was thereby able to continue working as a doctor despite these very difficult circumstances.

On July 2, 2018, Natalie Urwyler finally won her case before the Supreme Court of the Canton of Bern [1]. This Court upheld the earlier determination by a Bern Regional Court (November 7, 2017) that her dismissal had been abusive, because it was clearly a revenge action that had followed her own complaints. The Court ordered her reinstatement. But, even though her previous employer apparently accepted this verdict and did not appeal it to a higher court, they nevertheless prevented Dr. Urwyler from returning to her previous position. Instead, they gave her an immediate Leave of Absence. This is not legal. Unable to cope, either financially or professionally, or emotionally, with the prospect of yet another round of legal action to enforce the Court decision, Dr. Urwyler was forced to accept this outrageous situation. By this point she had expended around Sfr 500,000 (around \$500,000) of her own money on her legal costs. She therefore decided to focus on her family and her work as a doctor in anaesthesia. The legally active verdict that the termination by her former employer was a discriminatory act, based on the Swiss law of equality, opened for Dr. Urwyler the way back into Anesthesiology in a smaller hospital. Legally, Dr. Urwyler is still in an ongoing “employment relationship” with the Bern University Hospital, but, in actuality, she is not allowed to perform her work and she is excluded from research and teaching at that institution. In addition, they refuse to pay her the difference between her previous salary at the Bern hospital and her current salary at her hospital in the Canton of Valais.

The court confirmation of a "revenge termination" in 2014 established a significant precedent. It was the first legal judgment that allowed, or should have allowed, a woman who had been discriminated against to return to her job, as provided for in Article 10 of the Swiss Federal Act on Gender Equality established not that long ago in 1995! [2]. In recognition of this, Dr. Natalie Urwyler was awarded the "Prix Courage" in 2018 by the *Beobachter* magazine [3]: This prize is awarded to "acknowledge and promote individuals who fight fearlessly and with dedication for an idea – in favor of an open and faire culture in Switzerland. The purpose of the award is to draw society's attention to them, and to recognize their commitment."

Based on her own experiences, Dr. Urwyler is now herself fully committed to the struggle for Equal Opportunities in Switzerland. Despite being treated so unfairly, she did not succumb to self-pity or self-doubt, and instead now invests her energy to support other women, and also men, who are struggling with similar adversity. On August 26, 2020, she founded, along with three colleagues, the non-profit organization StrukturELLE (<https://www.strukturelle.ch>), which is dedicated to this purpose. Through numerous lectures and workshops, she is promoting Equal Opportunity and the protection of expectant parents. This includes raising the awareness of these issues within institutions, and in society generally, not least through the publication of "The Urwyler File – what does it cost to be a woman?" [4].

Why did the Urwyler case set such an important precedent? Because it was the first legal judgment involving a claim of "revenge dismissal" in connection with discrimination. Other victims had either given up, lost their legal challenges, or entered into settlements out of court. The court-ordered reinstatement was the first that I know of, even if it was followed by an immediate placing on a Leave of Absence. As described in detail in the "Urwyler file – what does it cost to be a woman?", those reporting misconduct by supervisors are often threatened with dismissal, and in some cases even terminated, or face other penalties, because they show a "lack of loyalty" to the institution. As in Urwyler's case, this usually has significant financial consequences for those affected, who often simply cannot afford to legally contest these steps. For Natalie Urwyler, that was one of the reasons why she set up StrukturELLE. StrukturELLE is an organization which promotes equality and its implementation. One aim of StrukturELLE is to raise funds for lawsuits of woman in the area of equality and you can become a member.

Legal complaints procedures for the implementation of Equal Opportunities are in a difficult position here in Switzerland. Because each case has to be dealt with in isolation, and because access to the details of comparable cases within organizations is severely limited by strict personal privacy laws, it becomes enormously difficult for victims to prove that there has been discrimination in any particular case. The plaintiff must present proof of an exactly equivalent case that was handled differently. The MIT report already described this general problem in 1999 [5]:

"Often it is difficult to establish discrimination as a factor, because any one case, no matter how disturbing or aberrant, can usually be ascribed to its special circumstances. Thus, we need to develop safeguards to prevent, and promptly correct the experiences that together constitute gender discrimination" (MIT report 1999, p. 6)

The MIT Report argued that identifying prejudice and unequal treatment requires a systematic assessment of procedures in multiple cases. This rather obvious problem was

discussed, but dismissed, in the recent judgement of the Federal Administrative Court in the case of Professor Marcella Carollo (physicist, ETH Zurich) [6]. On page 85 in Section 12.6.1 in the published decision (see [link](#), where at the end it gives you access to the full 100 pages of the court case A-4744/2019 – in German only) of their judgement, the Court explicitly wrote that "in the case of questions of discrimination, it requires substantiation with regard to a real comparative situation and it cannot be considered sufficient to simply name a possible comparative case without further explanation" and further: "Although it must be taken into account that finding and substantiating settlements of dismissal can be difficult, this cannot mean that the employer automatically has to provide information about all other personnel transactions." It is thus extremely difficult to prove gender discrimination in a court case, unless the case directly involves the very restricted issues such as pregnancy that are unambiguously gender-specific. Therefore, it can happen that, even though the Court judged that Professor Carollo's dismissal in 2019 by the ETH had been "disproportionate and unjustified" [6], she still lost her professorship, and her previously successful 25-year professional career was terminated. Because, in Switzerland, reinstatement requires a judgment that the dismissal was abusive and/or discriminatory – it is not enough that a dismissal be judged to be "disproportionate and unjustified". On the other hand, these same "disproportionate and unjustified" actions evidently have few consequences for the leadership of the public institutions who are responsible. There are seemingly limitless amounts of public tax money available to defend their actions in court [7], and there are no penalties when it is proved that these decisions were not correct. Unfortunately, the case of Professor Carollo at ETH is by no means the only one that I know about. There are several similar cases elsewhere, including the one at the Max Planck Society that was the topic of the recent open letter, sent on November 18, 2021 [8] and signed at short notice by 145 concerned scientists.

I can also confirm the experiences that have been reported in the Netherlands with regard to abuses of power [9]. "Personnel consultants" are often unreceptive or even hostile towards those affected, and represent almost exclusively the interests of the employer or of the informal power structures within the institutions. They usually advise victims to remain silent because otherwise they will damage their careers. Confidential "persons of trust" are also of limited value. They are rarely independent of the institutions concerned and, even if they are, they usually have no power to intervene or access to legal counsel to assist victims. Subsequent legal procedures often take years and crippling amounts of money, and still do not lead to just outcomes, as the cases of both Urwyler [1-4] and Carollo [6] in Switzerland, and other cases [7,8], have shown.

The published judgments in the two cases in Switzerland that I have highlighted offer a great deal of teaching material for future analysis. Ultimately this is about abuse of power, and the privileges of informal power structures. These are now being challenged by more and more excellent women professionals. I recently published a personal testimonial in this context [10].

These stories however raise the fundamental question of how true equality can be achieved within Switzerland?

Almost half of the working physicians today are women. In other areas, too, around half of the skilled workers are women today. This socio-economic change in society must be supported by our culture and our legal systems. Securing support of the media, as well as securing practical financial support of the pioneers challenging the current situation, and pushing for this necessary cultural change, should be an important concern for all of us.

- [1] German follows: Urwyler: 2018-2-19 Urteilsbegründung vom Regionalgericht und 2018-7-2 Urteil Obergericht. Kleine Notiz: Das 1. Instanzliche Urteil wurde am 7. 11. 2017 gefällt, die Urteilsbegründung kam aber erst am 19.02.2018. Die muss von den Parteien verlangt werden. Rechtsgültig wurde es wegen dem Rekurs des Insel Spitals nicht. Das Urteil vom Obergericht kam am 2. 7. 2018 und ist rechtsgültig.
- [2] The publication platform for Swiss federal law: Gender Equality Act, GEA from 1995 and status as of July 2020:
https://www.fedlex.admin.ch/eli/cc/1996/1498_1498_1498/en
- [3] <https://www.beobachter.ch/prix-courage/prix-courage-2018-die-gewinnerin-heisst-natalie-urwyler>
- [4] Akte Urwyler: <https://www.gleichstellungsgesetz.ch/d112.html> und <https://www.beobachter.ch/prix-courage/blick-podcast-uber-prix-courage-gewinnerin-die-akte-urwyler>
- [5] MIT report, March 1999: <https://web.mit.edu/fnl/women/women.html>
- [6] Carollo case: Federal Administrative Court (BVG) judgement from 14. April 2022, Abteilung I, A-512/2020;
English:
<https://www.bvger.ch/bvger/en/home/media/medienmitteilungen-2022/kuendigung-ethz.html>
- [7] S. Täuber, J. Hering, U. Keller, M. Mahmoud, “Academic harassers are protected with public resources”, eClinicalMedicine, vol. 52, 101588, 2022
<https://www.sciencedirect.com/science/article/pii/S2589537022003182>
- [8] <https://ulp.ethz.ch/news/ulp-news/2022/01/open-letter-signed-by-145-women-scientists-expressing-their-concerns.html>
- [9] <https://www.gender-blog.de/beitrag/machtmissbrauch-an-niederlaendischen-universitaeten>
- [10] <https://ulp.ethz.ch/news/ulp-news/2022/01/what-makes-me-tick-why-do-i-still-want-change-for-more-women-in-stem.html>