The major differences observed at cantonal level trigger reflections on the possible shortcomings of federalism: could differences in how administrative detention is enforced give rise to unequal treatment?

Further Reading

Restricting Immigration: Practices, Experiences and Resistance

A project of the ncrr – on the move

Christin Achermann, University of Neuchâtel

Swiss migration law defines rules and measures aiming at excluding ‘unwanted’ migrants. However, we know very little about the ways in which different actors put these rules into practice. Our project investigates – mainly through qualitative data – how the exclusion of migrants who are trying to enter or have been requested to leave the Swiss territory is practiced, experienced and contested by the people involved, in particular state agents and migrants. Two fields of exclusion practices and experiences are at the center of this project: border control and immigration detention.

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The ncrr – on the move is the National Center of Competence in Research (NCCR) for migration and mobility studies and aims to enhance the understanding of contemporary phenomena related to migration and mobility in Switzerland and beyond. Connecting disciplines, the NCCR brings together research from the social sciences, economics and law. Managed from the University of Neuchâtel, the network comprises fourteen research projects at ten universities in Switzerland: The Universities of Basel, Geneva, Lausanne, Lucerne, Neuchâtel, Zurich, ETH Zurich, the Graduate Institute Geneva, the University of Applied Sciences and Arts of Western Switzerland, and the University of Applied Sciences and Arts of Northwestern Switzerland.

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The NCCR are a research instrument of the Swiss National Science Foundation.

The National Centers of Competence in Research (NCCR) are a research instrument of the Swiss National Science Foundation.
For carrying out the removal of a foreign national, cantons may enforce administrative detention where this respects the principle of proportionality, and no other less coercive measure is available. The detention of asylum seekers whose application has been denied or under the Dublin procedure, and of persons residing irregularly in Switzerland, should therefore be applied as a last resort, and for the shortest possible time. But what is the situation in practice?

In the period studied (between January 1, 2011, and September 30, 2017), 39,659 detention orders were recorded for 32,731 individuals placed in administrative detention on one or more occasions. This corresponds to an average of 5,823 detention orders per year. Hidden behind these overall figures is a wide array of diverging cantonal practices in terms of frequency of enforcement of detention, the average duration of detention, the proportion of deported detainees, the type of detention used and the profile of the detainees.

Detention to Facilitate Deportation
The overwhelming majority (79%) of detention orders falls into the category of detention pending deportation (Art. 76 Federal Act on Foreign Nationals), which allows the deprivation of liberty in particular to prevent the persons from evading their deportation. There has however been a decline in this proportion (from 89% to 55%) since the introduction on July 1, 2015, of detention under the Dublin procedure (Art. 76a), which is now counted separately. Since that date, detainees under the Dublin procedure have represented 31% of detainees.

Most Detainees are Male Asylum Seekers
An overwhelming majority (92%) of detainees held on one or more occasion between 2011 and 2017 were men. The proportion of detentions of women varies according to canton: from 12% in Sòlo-thurn and 11% in Bern and Zurich, to 2% in Geneva, Aargau and Ticino, and less than 1% in Vaud.

Two thirds of the detainees have applied for asylum in Switzerland at some point during their migration process.

Two thirds (65%) of the detainees had applied for asylum at some point during their migration process. Of these detainees, 86% had received a DAWES (dismissal without entering into the substance of the case), including Dublin, and 14% had received a negative decision. Since 2011 there has however been an increase in the number of detainees who have never submitted an asylum application (37% of cases in 2017 as compared with 28% in 2011). The proportion of detainees who have been through the asylum procedure is lower for women (42%) than for men (67%). There are also major differences between cantons relating to the number of persons in administrative detention having claimed asylum: Geneva had the lowest proportion, at 38% of detainees who have applied for asylum, followed by Zurich at 53%. At the other end of the spectrum were the cantons of Basel Land and Ticino, at 98% in each case.

Deportees vs. No deportation

Between 2011 and 2017, detention was used during the period studied, at relatively consistent percentages from year to year. It should also be noted that during the period under study 308 cases of detention of children below the minimum authorized age of 15 years were registered. More than half of these children were detained for just one day, the average duration of these detentions is 10 days. Almost all of these cases (97%) are asylum-related, and since July 1, 2015, 71% of such detentions refer to children who applied for asylum.

In terms of country of origin, detainees were mainly from Nigeria (13%), North African countries (Tunisia 7%, Algeria 4%, Morocco 4%) or the western Balkans (Albania 10%, Kosovo 6%, Serbia 5%). The remaining 52% came from 144 other countries, including members of the European Union, particularly Romania (Graph 2).

An Average of Twenty-Two Days Spent in Detention
The average duration of administration detention during the period studied was 22 days, with little variation from year to year. Hidden behind this average are a wide variety of situations, however, with 52% of detentions lasting less than ten days, 32% between 11 days and one month, and the remaining 16% for more than one month (Graph 1).

The duration of detention for young people between 15 and 18 years of age was slightly higher than for adults (average of 24 as compared with 22 days). The detention of a minor was slightly less likely to end in a deportation than that of an adult (75% as compared with 81%). Notably, all cantons detained minors during the period studied, at relatively consistent percentages from year to year. It should also be noted that during the period under study 308 cases of detention of children below the minimum authorized age of 15 years were registered. More than half of these children were detained for just one day, the average duration of these detentions is 10 days. Almost all of these cases (97%) are asylum-related, and since July 1, 2015, 71% of such detentions refer to children who applied for asylum.

The enforcement of administrative detention of foreign nationals varies widely between cantons.

The average duration of detention is 22 days. Half of all detentions are for less than 10 days, but there are also cases of detention for long periods (between 9 and 18 months).

81% of detentions end with the person’s deportation. The proportion of detainees leaving the country is lower for detentions lasting more than 30 days.

Most of the detainees are young men originating from Africa or the western Balkans. Two-thirds of detainees have applied for asylum in Switzerland.

The overwhelming majority (79%) of detention orders ended with the execution of the deportation order. This proportion is lower for detainees seeking asylum (77%) than for other detainees (88%). It also varies according to the type of detention (89% for Art. 76 and 76a procedures, 40% for Art. 75, 20% for Art. 78, 12% for Art. 73), and the duration of detention. The proportion of departures is 93% following detention for between five and thirty days, but progressively decreases to 39% for detainees held for 9 and 18 months (Graph 1).

The enforcement of administrative detention of foreign nationals varies widely between cantons. The purpose of carrying out the deportation of foreign nationals or of determining their identity, Swiss law foresees different types of administrative detention on one or more occasions. This corresponds to an average of 5,823 detention orders per year. Hidden behind these overall figures is a wide array of diverging cantonal practices in terms of frequency of enforcement of detention, the average duration of detention, the proportion of deported detainees, the type of detention used and the profile of the detainees.

This analysis is based on data from the centralized migration information system ZEMIS of the Swiss State Secretariat for Migration. The scope includes all detention orders recorded by the cantons for the period from January 1, 2011, to September 30, 2017. It should be noted that according to a study by Guggisberg, Abrassart and Blachot, the entry of detention orders in ZEMIS may not be carried out in an entirely systematic manner. In this document, we make a distinction between the individual level (persons detained on one or more occasions during the period studied) and the administrative level (detention orders or placement of persons in detention). Since a given detention episode (understood as the time interval between entering and leaving detention) may be made up of several detention orders, we have merged consecutive orders in the calculation of the detention duration.