

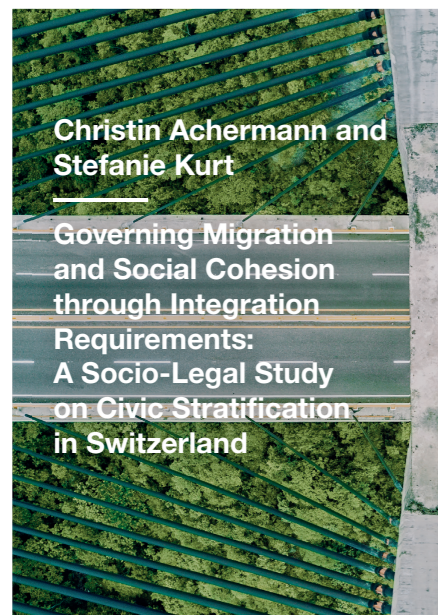
Compared to poor citizens, non-citizens receiving social assistance face consequent additional risks, amongst which is deportation. But there is also an important symbolic dimension to the exclusionary effects of such provisions: they indicate that non-citizens are not considered as belonging, as being part of the solidarity group that is entitled to indefinite support when in need. This has

become particularly salient at the heart of the COVID-19 crisis when welfare support associations witnessed the extent to which households renounced or did not make use of their right to social assistance for fear of losing their residence permits. Yet, the Swiss Constitution states the right to assistance to whomever in need and “unable to provide for themselves” (Art. 12 Constitution).

#### Further Reading

Meier, Gisela, Eva Mey, und Rahel Strohmeier Navarro Smith. «Nichtbezug von Sozialhilfe in der Migrationsbevölkerung». Projektbericht (2021), Zürcher Hochschule für Angewandte Wissenschaften (ZHAW) Departement Soziale Arbeit.

Borrelli, Lisa Marie, Stefanie Kurt, Christin Achermann, and Luca Pfirter. «(Un)Conditional Welfare. Tensions Between Welfare Rights and Migration Control in Swiss Case Law». *Swiss Journal of Sociology* 47, no. 1, 93–114.



### Governing Migration and Social Cohesion through Integration Requirements: A Socio-Legal Study on Civic Stratification in Switzerland

Christin Achermann and Stefanie Kurt

#### A project of the nccr – on the move

This socio-legal project questions how and with what effects the notion of “integration” has become a decisive criterion, in migration law, administrative and court practice, based on which states select who shall be granted or denied access to specific rights. This reveals how social cohesion is conceived in both law and practice, and who is considered to belong or not.

Contact for in a nutshell #23: Christin Achermann, professor, University of Neuchâtel, [christin.achermann@unine.ch](mailto:christin.achermann@unine.ch) and Stefanie Kurt, professor, HES-SO Wallis-Valais, [stefanie.kurt@hevs.ch](mailto:stefanie.kurt@hevs.ch)

The nccr – on the move is the National Center of Competence in Research (NCCR) for migration and mobility studies. It 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 at the University of Neuchâtel, the nccr – on the move is currently in its third phase (2022–2026) for which it receives SNSF funding of 10.8 million Swiss Francs. The network comprises eleven research projects at eight universities in Switzerland: The Universities of Basel, Geneva, Lausanne, Neuchâtel, as well as the ETH Zurich, the Graduate Institute Geneva, the University of Applied Sciences and Arts of Western Switzerland, and the Zurich University of Applied Sciences.

“in a nutshell” provides answers to current questions on migration and mobility – based on research findings, which have been elaborated within the nccr – on the move. The authors assume responsibility for their analyses and arguments.

Contact for the series: Nora Bardelli, Knowledge Transfer Officer, [nora.bardelli@nccr-onthemove.ch](mailto:nora.bardelli@nccr-onthemove.ch)

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**on the move**

National Center of Competence in Research –  
The Migration-Mobility Nexus  
[nccr-onthemove.ch](http://nccr-onthemove.ch)

University of Neuchâtel,  
Rue Abram-Louis-Breguet 2,  
2000 Neuchâtel, Switzerland

**nccr** →  
**on the move**

National Center of Competence in Research –  
The Migration-Mobility Nexus  
[nccr-onthemove.ch](http://nccr-onthemove.ch)

Christin Achermann,  
Lisa Marie Borrelli, Stefanie Kurt,  
Doris Niragire Nirere, Luca Pfirter

What Happens When  
Migration Control and  
Social Assistance Get Entangled?

in a nutshell #23, December 2022

 Swiss National  
Science Foundation

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## Messages for Decision-Makers

**Independence from social assistance is now a preponderant criterion to assess the legally required “integration” of foreign nationals in Switzerland.**

**The implementation of the legislation that targets foreign nationals receiving social assistance intertwines the inherently different competences and objectives of each administration and makes their procedures more complex.**

**For recipients of social assistance, this complexification can lead to potentially contradictory expectations and advice. Such mixed messages can generate further economic and legal status precarization.**

### What is meant by ...

#### ...integration

The notion of “integration” is extensively discussed and critiqued in social sciences. Here we use “integration” in its legal understanding, set forth by the FNIA where “integration” is not explicitly defined but is central to granting and extending (permanent) residence permits. “Integration” is assessed by competent authorities based on four criteria: respect for public safety and order; respect for the values of the Constitution; language skills; participation in economic life or the acquisition of education. Personal circumstances, disability, or illness are taken into account in the assessment of the integration criteria (art. 58a FNIA).

**Since 2019, Swiss social services are legally obliged to *spontaneously* report foreign nationals receiving social assistance to migration services. When deciding on the renewal or prolongation of residence permits, migration agents must assess the “causes” for welfare receipts under the premise that such receipts are a sign of a lack of “integration”. Migration control thereby diffuses into other legal and administrative fields, particularly social assistance administrations.**

Studies on migration control have for a long time analyzed the discourses, policies, and tools deployed by states to regulate the entry and stay of foreign nationals in their territories. In this Policy Brief, we take a specific interest in the implementation of Swiss migration law that establishes a strong link between ideas and requirements regarding “integration” and economic independence from the state. Observing the work of frontline agents in social and migration services, we investigate how they implement legal provisions in their everyday practices, internally, with other administrations, and in their interactions with foreign nationals.

#### An Economic Understanding of “Integration”

A reading of Swiss legislation on foreign nationals over time shows that economic motives, such as financial self-sufficiency or independence from social assistance, are fundamental to Swiss migration law. As such, the reception of social assistance has long been one of the drivers for the revocation of a residence permit or the refusal of family reunion requests. Under the former law, foreign nationals residing in Switzerland for more than 15 years could not lose their permanent residence permit, should they receive social assistance. In contrast, in EU law, receipt of social assistance can no longer be a reason for deportation after five years of regular stay in a host country. Recent changes introduced in 2019 by the Federal Act on Foreign Nationals and Integration (FNIA) and the Ordinance on the admission, residence and exercise of a lucrative activity (OARA) require social services to spontaneously report to migration services whether and to what extent foreign nationals are dependent on social assistance (Art. 97 para. 3 let. d FNIA, Art. 82d OARA). The FNIA also includes the possibility to downgrade a permanent residence permit into a residence permit if the holder does not fulfill “integration” criteria (Art. 63 para. 2 FNIA, Art. 58a FNIA) or to revoke their permit if they are “dependent permanently and to a large extent on social assistance” (Art. 63 Abs. 1 let. c FNIA).

**“The interpretation of the legal relevance or not of this reception is not the responsibility of the social authorities of the municipality, but of the migration office.”**

**Cantonal migration office**

Following the Swiss “integration-step-model”, the counterpart to obtaining an increasingly secure right to stay is to regularly show proof of successful “integration”. The FNIA thus stipulates that “participation in working life” is constitutive of the legally required “integration” criteria. In their decision to renew, revoke, or downgrade a residence permit, migration officers balance public interests, personal circumstances and the “integration” of a foreign national (Art. 96 para. 1 FNIA). Additionally, in the case of a migrant receiving social assistance, migration services’ agents proportionally assess the amount of social assistance already allocated, the prospect of dependency, as well the individual effort.

#### Variety of Objectives, Meanings, and Practices

Our research findings in several Swiss cantons highlight different practices both in cantonal migration services and communal social services. Some of the latter may for instance consider that not all of their contributions to a client are part of social assistance per se, and they would therefore not communicate certain aid to the migration services. How the “obligation to communicate” a specific case of social assistance to the migration offices is carried out can also differ. The period between the initial reception of social assistance benefits and the communication might be immediate, or could intervene after a certain amount of social assistance to the client is reached, or could be done independently of the content of the case, when social and migration services have set a protocol to share relevant databases. This communication may be done by

the social worker who is directly dealing with the client, by an administrative agent, or it may even be automated.

**“Sometimes [in the file sent to the migration service] the lawyers see that the social worker is really giving the information against their will.”**

**Legal advisor**

A consistent feature is that social workers, when addressing their clients, consider the risk of receiving social assistance for holders of residence permits. While social assistance is the last safety net, social workers can encourage foreign nationals to further consider alternatives or urge them to get into work inclusion programs to show good faith in trying to re-enter the workforce. Social workers may also advocate for their clients, sharing further information with migration services about the efforts deployed to cease the reception of social assistance. They thereby aim at disproving the migration office’s idea that the reception of social assistance is “self-inflicted” by the person. Conversely, some social services might benefit from status-related sanctions to achieve their own financial goals in the context of restraints on public expenditure.

**“But if we see that we have a case where a longer period of social assistance is foreseen, then it is possible that the revocation happens; then [...] we check the file.”**

**Cantonal migration office**

Within migration services, differences mostly depend on the fact that decisions to prolong, revoke, or downgrade a residence permit because of the reception of social assistance rest on agents’ proportional use of discretion. Over time, federal jurisprudence has given two key criteria, each sufficient to guide agents on how to assess proportionality between public interest, personal circumstances, and “integration” requirements. The first criterion is whether the reception of social assistance is “self-inflicted”, meaning the individual has not done all in their power to secure an income. The other concerns predicting the duration of reception of social assistance considered to be too much of a burden on taxpayers.

Differences in assessing the responsibility of the recipient and/or their prospects still appear amongst migration services. Foreign nationals can be first informed and then warned, threatened of warning then warned, or only warned by an official letter, stating that their residence permit is at stake because they are receiving social assistance. With the warning letter – or occasionally before – migration offices activate the constitutional right to be heard in administrative procedure, prompted in diverse forms. Recipients can be sent a set of questions, sometimes consequent, or they can receive an open request to justify the reception of social assistance. The justifications provided by foreign nationals are evaluated by migration officers and form the basis of the decision on their authorization to remain in Switzerland. In some services, an interview is conducted with the person before the decision is taken. Migration officers can also formally or informally contact social workers to gain further information about the person’s situation. To avoid a permit revocation, it is recurrent that migration services include requirements for its prolongation. Since 2021, the State Secretariat for Migration (SEM) requests to approve certain cases of prolongation of permits for persons receiving social assistance.

#### Adding Relational Layers to Decision-Making

When it comes to social assistance, migration services’ agents and legal counselling services feel that the margin of discretionary power has reduced over time, because of the obligations set by the law, thresholds set by jurisprudence, or guidelines set out by the SEM. These have also exacerbated the relational nature of decision-making, the fact that a decision depends on formal and informal interactions with other institutions.

Decisions to terminate a residence permit follow a process of shared information by various institutions with different work ethics, practices, and aims, or preceding decisions taken by civil servants from other institutions as well as experts. This is for instance true when the reception of social assistance is the result of an individual’s case being dismissed by the disability insurance. In such cases, experts from the disability insurance have asserted that the person is “in capacity to work in tasks adapted to their condition”. Whether or not such adapted tasks exist in the current labor market, the person is deemed fit for work by the disability insurance. Consequently, migration offices conclude that if they do not work, their dependency on social assistance is self-inflicted.

## Complex Procedures and Mixed Messages

When implemented by frontline agents in social services and migration services, the legal requirement for foreign nationals to “participate in working life” results in an entanglement of competences and responsibilities between the two administrative fields. Migration offices might accomplish tasks reserved for social workers in different areas. For example, when advising a course of action to avoid the downgrading or termination of a residence permit or directing permit holders towards other institutions that could support them in their job hunt. Conversely, in their daily work, social services are confronted with a segmentation of their clientele by nationality and social workers may investigate issues outside of their realm, such as migration law, to best advise their clients or to pursue their service’s financial interests. Tasks not only increase in numbers and complexity, but they also expand, requiring more skills to perform one’s work.

**“The first point concerns the legitimacy of social assistance, which [...] is linked to the stigmatization of recipients and the individualization of the problem.”**

**Communal social service**

The FNIA reinforced this entanglement of competences and responsibilities, which could result in mixed messages to foreign nationals and those who help them in the procedures. Social services could ascertain to the person that they are on the right path, while migration services might require more proof that they do everything to end dependency. The renewal of a residence permit might also be withheld pending justification from the foreign national, consequently engendering more difficulties in being hired for lack of a permit.

#### Depoliticizing Poverty and Excluding Poor Migrants

The criteria of self-infliction and foreseeable end of the reception of social assistance have the effect of individualizing poverty. Indeed, when applied to a particular situation, both arguments place responsibility upon the individual, neglecting to consider the structural causes of unemployment and poverty. As a result, those furthest from employment, because of their age, health, or qualifications, are more likely to face at least the first phases of revocation or downgrading procedures.