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The Migration-Mobility Nexus

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Administrative Detention
of Foreign Nationals in Figures

in a nutshell #12, January 2019

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Messages for Decision-Makers

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

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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).

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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.

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

What is meant by...

... administrative detention of foreign nationals

Administrative – no to be confounded with penal – detention was introduced in 1994, as a coercive measure available to cantons for the purpose of carrying out the deportation of foreign nationals or of determining their identity. Swiss law foresees different types of administrative detention: temporary detention (Art. 73 Federal Act on Foreign Nationals and Integration FNIA), detention in preparation for departure (Art. 75), detention pending deportation (Art. 76), detention under the Dublin procedure (Art. 76a), coercive detention (Art. 78). The maximum term of detention is 18 months for adults and 15 months for minors, who may be detained as from 15 years of age.

... Dublin system

This is the European system setting down the criteria for determining which state is responsible for processing an asylum application. A specific type of detention (Art. 76a FNIA) for the person's transfer to the responsible state was introduced in Switzerland on July 1, 2015.

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), 39,695 detention orders were recorded for 32,731 individuals placed in administrative detention on one or more occasion. 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

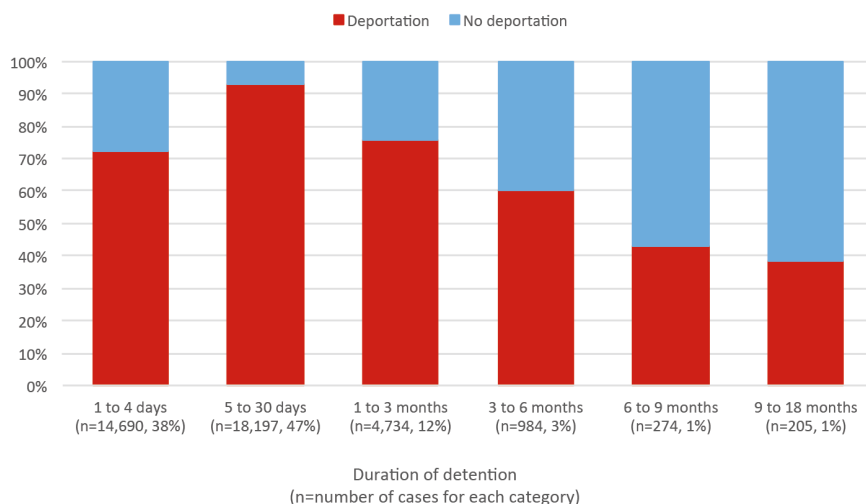
The overwhelming majority (79%) of detention orders falls into the category of detention pending deportation (Art. 76 Federal Act on Foreign Nationals), which allows the deprivation of liberty in particular to prevent the persons from evading their deportation. There has however been a decline in this 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 detentions.

Over the whole of the period studied, temporary detention (Art. 73, maximum three days) for the person's identification or for service of a decision was ordered in 9% of cases. The other types of detention were used only very rarely: detention in preparation for departure (Art. 75) was ordered in less than 3% of cases. Coercive detention (Art. 78) accounts for 0.5% of detentions.

A total of 81% 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 between 9 and 18 months (Graph 1).

Graph 1: Deportation according to the duration of detention (January 1, 2011–September 30, 2017)



Data Source: Swiss State Secretariat for Migration

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 Solothurn and 11% in Bern and Zurich, to 2% in Geneva, Aargau and Ticino, and less than 1% in Vaud.

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

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% for between 11 days and one month, and the remaining 16% for more than one month (Graph 1).

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“The average duration of administration detention is 22 days, but hidden behind this average are a wide variety of situations.”
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Women generally remain for a shorter time in detention than men (average of 12 days for women, as against 22 days for men). Asylum-related detainees tend to be held for longer periods (average of 27 days) than those who have never applied for asylum (average of 11 days). Detention for more than three months mainly refers to persons involved in the asylum process (86%).

Some 13% of the detainees had been held more than once, either after being deported on the first occasion, or after being released from detention in Switzerland.

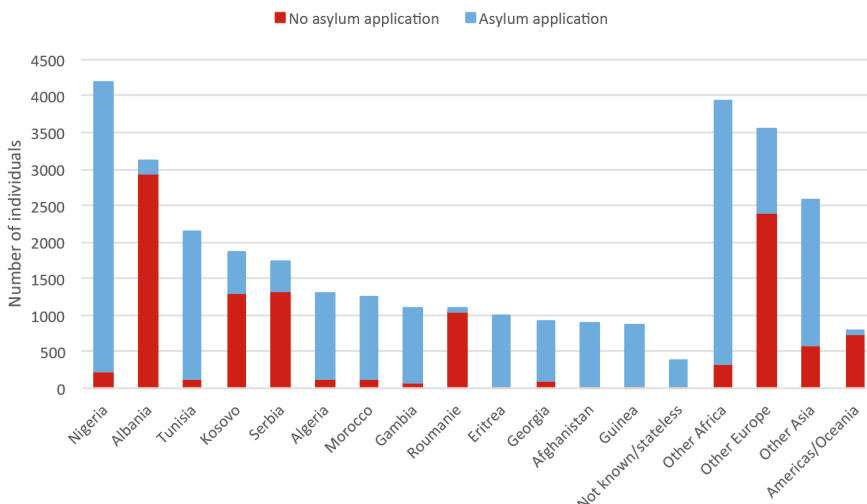
Minors in Detention

The average age of detainees is 29 years. Between 2011 and 2017, detention was ordered on an average of 275 occasions per year for minors of between 15 and 18 years of age, i.e. almost 5% of the total number of detainees. Of these cases, 90% were asylum-related. Since the introduction of detention under the Dublin procedure, 60% of detentions of minors have been on this basis. The overwhelming majority of these detainees were boys (95%). The nationalities featuring most frequently were Afghanistan (14%), Nigeria (11%) and Guinea (11%).

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. While 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

Graph 2 : Administrative detention by nationality (individuals detained on one or more occasion during the period from January 1, 2011 – September 30, 2017)



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 Bischof, 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 occasion 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.

Data Source: Swiss State Secretariat for Migration

who were the subject of a Dublin decision. These findings highlight a real problem, also addressed in a [report recently published by Terre des Hommes](#), which needs to be investigated in depth.

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“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?”
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A Primary Coercive Measure, but One Used in a Variety of Ways

Our quantitative analyses show that use of the administrative detention for foreign nationals plays an important role in the Swiss migration control system. While certain patterns of similarity can be discerned in the profiles of the detainees, it is important to note the wide diversity of individual situations and experiences hidden behind these numbers. The major differences we have found between cantons trigger reflections on the possible shortcomings of federalism: could differences in how administrative detention is enforced by the cantons give rise to unequal treatment? Given that this is a coercive measure based on depriving individuals of their liberty, we believe it is important to pursue this line of inquiry.

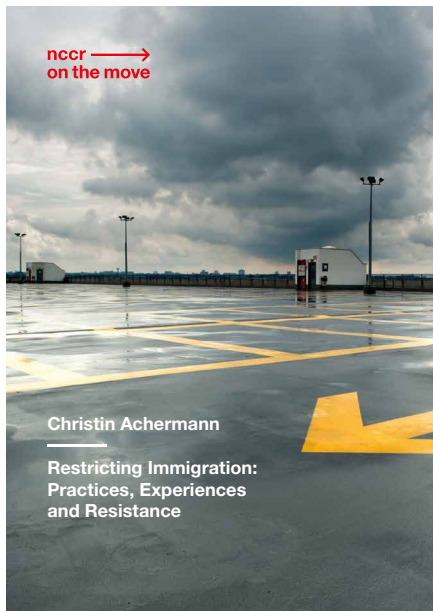
Further Reading

Contrôle parlementaire de l'administration. [“Evaluation des mesures de contrainte en matière de droit des étrangers. Rapport final du Contrôle parlementaire de l'administration à l'attention de la Commission de gestion du Conseil national”](#). Berne, 2005.

Guggisberg, Jürg, Aurélien Abrassart und Severin Bischof. [“Administrativhaft im Asylbereich. Mandat “Quantitative Datenanalysen”. Schlussbericht zuhanden Parlamentarische Verwaltungskontrolle”](#). Bern: Büro für arbeits- und sozialpolitische Studien BASS, 2017.

Rezzonico, Laura. [“Les agents de détention entre contrôle et assistance”](#). terra cognita, No 32 (2018), p. 108-110.

Terre des hommes. [“État des lieux sur la détention administrative des mineur-e-s migrant-e-s en Suisse”](#). Lausanne, 2018.



Restricting Immigration: Practices, Experiences and Resistance

**A project of the «nccr – 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 nccr – 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.

“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.

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