



Unabhängige Expertenkommission
Administrative Versorgung
Commission indépendante d'experts
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Report Preliminary Findings Workshop IEC on Administrative Detention

This is a documentation of the public preliminary findings workshop of the IEC on 18 January 2017. The English summaries presented in this document are translations of the original German or French texts.

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Session B – Deprivation of Liberty for Purposes of Social Prophylaxis: Establishing Norms and Categories

Panel Moderator: Dr. Christel Gummy, IEC Research Coordinator

Comments: Prof. Dr. Jacques Gasser, Member of the IEC

Comments and discussion report: Dr. Alix Heiniger and Dr. Ludovic Mangué

Guest presentation

Prof. Dr. Cristina Ferreira, College of Health Sciences of the Canton of Vaud [*Haute École de Santé Vaud*] (HESAV):

The public interest and the deprivation of liberty for welfare purposes

Between the middle of the 1970s and the beginning of the 1980s an important legislative reform was carried out in Switzerland. The introduction of federal provisions on the *deprivation of liberty for welfare purposes* put a definitive end to the cantonal laws governing the use of administrative detention. The analysis of this transition is among the objectives of a current Swiss National Fund (SNF) research project «*Protection by force: a socio-historical study of the deprivation of liberty for welfare purposes*» – directed by Cristina Ferreira and co-directed by Jacques Gasser. Members of the study's research team: Ludovic Mangué (historian), Delphine Moreau (sociologist), and Sandrine Maulini (historian).

Beyond the legislative milestones, in this case the amendment of the Civil Code, which entered into effect in 1981, the realities are marked by discontinuities which should be recalled. On the one hand, the cantons had not waited for the passage of the amendments to federal law before repealing their own laws. At the same time, however, the imposition of administrative measures for dealing with aberrant behaviour continued, through the use of guardianship regulations. While the desire to achieve conformity with international law (ECHR) undeniably played a role in this reform process, consideration must also be given to the influence of the changes brought about by capitalism. Building on the work of Michel Foucault on the management of popular illegalities, it is important to define the normative structures that presided over the use of detention, and to understand the mechanisms that

contributed to the decline of those disciplinary practices. Against the background of industrial capitalism, the motive of governmental efforts to control social undesirables was to transform *living time* not usefully employed into *working time*. With regard to administrative detainees, forced labour was the favoured means for containing the disorder in which they lived and for binding them into the production apparatus. Over the course of the 1970s, the crisis that capitalism went through had repercussions for the normalisation and correction methods then in use. Those were rendered obsolete with the advent of a new form of capital – *human capital* – which was to play a central role in the relaunching of economic growth policies.

It was within this context that criticism of the repressive detention policies then in use began to multiply. In the Canton of Vaud this came to expression with the parliamentary motions submitted by Menétry in 1969 and 1971, which denounced the archaic nature of a system that was contrary to the principles of social justice. Nevertheless, the legislative changes introduced in that canton in the early 1980s gave rise to concerns of another kind. The granting of a more important role to the guardianship authorities, as formally introduced by federal law in 1978, met with resistance. In order to limit the authority of the magistrates, *ex officio* hospitalisation of the mentally ill and the institutionalisation of alcoholics continued to be governed by public health law. In the same interest of preserving existing powers of authority, efforts were made to maintain the position of the district Prefects in the procedures for institutionalising alcoholics.

Lastly, certain actors deplored the abandonment of such categories as «vagrancy» and the disappearance of work colonies, which they felt had proved their usefulness as a means of controlling the «emotionally disturbed». This is reflected in the position taken by the Guardian-General of the Canton of Vaud in 1985, who denounced the inconsistency of the new policies while at the same time welcoming the advances made in providing individuals deprived of their liberty with greater legal protection. This kind of critical analysis brings into relief the conflicting reactions to the transformations that were then taking place in the ways marginal elements of society were dealt with. Discipline through forced labour gave way to other forms of intervention into the lives of population groups now no longer categorized under the general rubric of «indolent» or «behaviourally disturbed», but subject instead to medical-psychiatric diagnostic techniques.

IEC Presentation

Dr. Lorraine Odier and Matthieu Lavoyer, IEC researchers:

Categorisation procedures and resistance to categorisation: study on a case file from the Cantonal Commission on Administrative Detention (Canton of Vaud – 1950)

Adopting the perspective of an «inter-area» (C and E) research study, this presentation focused on the case file of a man who had been placed in administrative detention in the Canton of Vaud in 1950. In addition to this case study, the presentation included an examination of the categorisation procedures used by the authorities and the efforts of the individual involved to resist those procedures. One part of this examination was an analytical description of the operative steps taken by the concerned authorities to gather information on an individual and to label him in a way that inevitably led to his detention. The procedures employed involved various different actors (the police, district prefects, cantonal commissions, etc.) and relied on various techniques and practices, including, in this case, police surveillance, the preparation of case files by the cantonal commission on administrative detention, and the maintenance of records on the individual's past history, which played a decisive role in the decision-making process. At the same time, attaching particular importance to the documentation produced by the individual concerned, and to his point of view, the speakers also considered the different means of resistance he was able to devise.

An analysis of these different aspects of the case showed that the violence of the detention procedures was not simply submitted to passively, but also elicited strong reactions. Individuals against whom an administrative detention order was issued developed strategies of resistance for breaking or circumventing the rules and the measures that were imposed. From this point of view, the struggle surrounding the legitimacy that was attributed to the authorities and to different ways of life is seen to be a central element in understanding administrative detention, through which the debates, conflicts and power relations surrounding its use are revealed. While the stigmatising effects of the case file must emphatically be noted, it is also clear that the process of categorisation did not proceed in a linear or absolute manner, but was punctuated by resistance, periods of complete inaction, and contradictions.

Comments and discussion

Jacques Gasser opens his comments by remarking on the similarities between the two projects and the complementarity that exists between the work of the IEC and other academic studies. This makes it possible to gain a wide-reaching overview of the 20th century and to identify divergences in the means employed.

Martin Lengwiler also takes up this issue and finds it interesting to note the similarities between the objectives pursued, despite the differences in the methods employed. This, he continues, is an issue that commonly arises in connection with the construction of a welfare state, as may be seen by comparing this process in different countries. He poses the question of whether there exists a certain specificity to the problems identified that can be linked to the socio-economic context of each particular region.

The authors reply that the methods employed were for the most part quite similar; they concentrated on the same types of phenomena that were seen as social scourges (alcoholism, prostitution, indolence) and, in a more general sense, on persons at the margins of a society that sees regular employment as the norm. The problems come to expression with divergences that reflect the different circumstances that prevail in urban and rural milieus. Aside from the question of the available legal instruments, an issue that arises again and again for the actors involved in the implementation of administrative detention measures is this: what is to be done with individuals one doesn't know what to do with because they question the validity of existing institutional norms?

For Cristina Ferreira, the use of institutionalisation for welfare purposes (after 1980) is based on the same logic. It applies to individuals who have been driven to the margins of society, even if one does find distinctive features specific to certain periods and regions (cantons of Vaud and Valais) in the records. With regard to psychiatric hospitals, she notes, the case files are a rich source of information for observing changes in family and social structures.