



Unabhängige Expertenkommission
Administrative Versorgungen
Commission indépendante d'experts
internements administratifs
Commissione peritale indipendente
internamenti amministrativi

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.

Contents

Session D – A Social Welfare Panacea? Multi-Functional Detention Facilities and the People inside them	2
--	---

Session D – A Social Welfare Panacea? Multi-Functional Detention Facilities and the People inside them

Panel moderator: Dr. Loretta Seglias, Member of the IEC and IEC research coordinator

Comments: Prof. Dr. Martin Lengwiler, Member of the IEC

B Comments and discussion report: Dr. Ernst Guggisberg and Joséphine Métraux

Guest presentation

Dr. Urs Germann, University of Bern:

Detained in Prison: the role of multi-functional facilities in the enforcement of administrative detention orders

Multifunctional facilities played an important role in the use of administrative detention. Many former detainees report that they were incarcerated together with people who had been convicted of crimes and that they must live with this stigma for the rest of their lives. Public attention was drawn to this problem, in particular, by reports on the detention of young women in the Hindelbank correctional facilities in Bern. The presentation focuses on the question of why mixed detention regimes remained so widely and so long in use – in some cases to this very day. Two possible explanations are advanced, which mutually reinforce one another. The first theory is that the social and legal understanding of criminal, socially deviant and non-normative behaviour largely overlapped until well into the 20th century. In this context, the use of forced labour for both correctional and educational purposes in the same prison facility was long seen as a legitimate solution for what was viewed as a single social problem that did not fall under any of the traditional legal regimes.

The second theory concentrates more on the importance of factors that were specific to given times and places. The Hindelbank Prison Facilities are taken as an example to illustrate the various turning points in legal, educational and financial policy that made it possible up until the 1970s for women who were still minors to be detained in a facility that was also used for penal correction purposes. Taken together, the two theories help to demonstrate the interrelationship between long-term developments, social interpretation

patterns and individual administrative decisions. The practical effect of this was that the authorities, even when there was no lack of alternatives, were willing to accept the fact that their decisions would cause severe psycho-social distress and prejudice.

IEC presentation

Dr. des. Kevin Heiniger, IEC researcher:

Juvenile correctional labour, alcohol withdrawal and old age homes - On the extended forms of institutional detention on the example of detainees and staff members

Administrative detainees were often placed in institutions that performed a whole series of functions under a single roof – serving simultaneously as prisons, juvenile correctional labour facilities and alcohol rehabilitation centres, and even as old age homes. A case study concerning Rosa Sommerhalder (1989-1966), who was a detainee for many years, provides an illustration of this phenomenon and also gives some indication of the stages of escalation and de-escalation that were typical of the administrative detention procedures followed by the authorities. After a series of convictions for property offences, Sommerhalder was detained for security reasons from 1927 to 1932, without interruption, in the Hindelbank Prison Facilities. Following a further conviction this was repeated from 1938 to 1948 and, because of probation violations, again from 1943 to 1946. It was only after she was no longer of child-bearing age – one of the factors that was expressly taken into consideration – that the detention authorities were willing to risk moving her to an «institution» where the regime was less strict. She remained in the Dettenbühl nursing facility until the spring of 1953. Thereafter she was placed as a maidservant with a rural family, a step that may be seen as a further stage of de-escalation. On grounds of «unsuitable» conduct she was then sent back to Dettenbühl in the fall of 1960. Suffering from diabetes, she was increasingly in need of nursing care, so that in the years that followed the «institution» progressively came to perform the function of a nursing and old age home. Rosa Sommerhalder died there in December 1966.

The second part of the presentation considers the situation from the point of view of the staff that worked at the Hindelbank Prison Facilities and, on the basis of the institution's annual reports, outlines the stages in the process of their professionalisation. Because Hindelbank was used as a penal correction, administrative detention, juvenile correctional labour and

alcohol rehabilitation facility, employees there had a wide range of functions that they were called upon to perform. For many years, however, the staff – which up until the 1970s was made up in part of deaconesses – had received no particular training to prepare them, in particular, for the task of dealing with inmates. A hesitant start was first made in 1933 with the introduction of a training course for facility personnel, conducted by the Swiss Association for Prison Services and School Supervision. But it was not before more than 20 years later that real progress began to be made. In 1959 twelve staff members took part in a training course for guards and four senior staff members participated in courses specially designed for them. Further, more specialized training began to be provided in the 1960s, with special courses for social workers, courses on dealing with girls with «severe behavioural problems», and both introductory and continuing education courses conducted by the Swiss Association for Penal and Prison Services. Overall, it is only since the 1950s that one can speak of there being a significant advance in the level of professional skills possessed by the staff at Hindelbank. Prior thereto, and over a period of decades, there was a wide gap between the what was expected under the law, as formulated in the 1942 Criminal Code, and the institutional reality.

Comments

Martin Lengwiler opens his comments with a question addressed to Kevin Heiniger. He refers to the case of Rosa Sommerhalder as recounted by Heiniger. Lengwiler finds it particularly interesting to see how small petty offences could be used to justify intervention by the authorities using extremely serious measures. This is a paradox, he notes, which was highly traumatic for the individuals concerned. This raises the question, Lengwiler argues, as to what was ultimately needed for a small misdemeanour, or a series of small petty offences, to lead to such hugely invasive measures. He wonders aloud whether there were certain paradigms that were followed – such as responses to repeated events, to a certain number of offences, or a temporal logic. Or were there no paradigms at all? Heiniger believes that it is possible that the individuals' family background could have served as a paradigm, that a family that had already been stigmatised, for example, might have made the authorities more prone to intervene. In addition, he suggests, it is possible that gender-related factors may have appeared, which influenced the decision-making process and which ultimately mirror the stereotypes and role images that prevailed at the time.

Commenting on Germann's presentation, Lengwiler notes that the hypothesis that there are parallels between the debates that took place on criminal law reform and developments in the history of administrative detention is highly interesting. To what extent did the decades-long debates and the process of revising the Criminal Code influence the changes that took place in the use of administrative detention? The intent of the new Criminal Code was to move away from the punitive character of criminal law, since imprisonment was no longer seen as the sole alternative. Does the history of administrative detention truly fit into that context?

Germann argues in response that the relationship between criminal law and administrative detention should be seen as one of dynamic reciprocity. The reform of criminal law in Switzerland, he points out, relied to a large extent on existing administrative detention procedures and the logic of those procedures was in many cases incorporated into criminal law. At the same time, he recalls, the laws on administrative detention that were adopted in the 1920s were heavily influenced by the various drafts of the Swiss Criminal Code then circulating. In addition, he argues, the question must be posed concerning the extent to which administrative detention also served to supplement criminal sanctions in the sense that it provided a more extensive form of social prophylaxis. This was because the laws on administrative detention placed fewer hurdles in the way of those ordering the deprivation of liberty for a lengthy or even indeterminate period of time than did the criminal laws, where the sentence was based on the gravity of the offence.

Discussion

The first question from the public concerns the use of petty offences as an illustration of the kinds of things that could lead to administrative detention. Was this a random phenomenon, or are there indications that the social background of the individual played a role? Was a distinction drawn, for example, between the «good» (conformist) poor and the «bad» (non-conformist) poor? Kevin Heiniger supports this hypothesis. In the case of Rosa Sommerhalder it is clear that her conduct was judged immoral because she refused to accept a passive role («uncomplaining victim attitude»).

Another member of the public talks of her own life. She recalls having grown up in four different foster homes and, based on that experience, can only confirm what was said: conformist children had an easier time than those who were more daring and willing to taking

risks. Germann joins the discussion and points out that the tendency to stand by negative characterisations or appraisals was very persistent and that there was little possibility for the individuals concerned to escape those moral judgements. Resistance was seen by the authorities as proof of guilt. Institutional actors, he notes, were able to build a kind of network, while it was very difficult for the individuals concerned to combat such «detention coalitions» made up of public officials and other social authorities or actors.

A third member of the public is interested in the significance of eyewitness reports and documents prepared by the former detainees themselves, which researchers describe as highly interesting and important sources. She asks how the research teams use those sources and what kinds of documents they are referring to. Heiniger replies that there is a large number of documents prepared by former detainees, the content of which makes it possible to draw only very limited conclusions about the persons in question (e.g., applications to the authorities). Such documents offer only superficial insights into the character of the person involved, based on such things as handwriting and orthography. More rarely, diaries or similar records exist, which serve as a remarkable source of direct testimony. Such sources are also taken into account in IEC's research. Documents written by the detainees themselves, he explains, are of particularly high interest when they can be brought into correlation with information or responses found in official documents.

Loretta Seglias (IEC) adds that another highly informative kind of source is letters (addressees, content, censorship). They can provide indications of such things as the grounds for release from an institution, including such things as the arguments put forth by detainees and their efforts to conform. Another member of the public then also speaks of events in her own life and reports that she had understood very early that she was expected to conform. She had always told herself, «The best thing is to keep quiet. Do what they tell you.» She also remarks that the so-called personal or individualised documents actually represent only a kind of mainstream thinking, and do not really reveal very much about the way the individuals truly felt. «Who were we supposed to write to using the right words,» she asks. «And how were we supposed to find those words?» She points out that the fact that there are no, or hardly any, documents written by the victims is only natural. In her case, for example, her official guardian was also her foster mother. Thomas Huonker (IEC) adds that documents composed by the victims, such as complaint letters that were not forwarded by the institutions, are considered to be a very important element of the IEC's research. In addition, he explains, the IEC also places a high value on the interviews it conducts, both as testimony and as sources of information on past events from the perspective of the victims.

The final question concerns administrative detainees who were compelled to reimburse the authorities for their post-release education in reform schools. Heiniger responds that he has not encountered any concrete cases of this kind in his research, but that there were cases where the commune from which the detainees stemmed was required to assume the costs. Germann also speaks to this point and tells of a case involving the City of Bern, where the commune that was required to assume the costs of detention wanted to request reimbursement from the family of the former detainee. In that instance the juvenile attorney responsible for the case stepped in and succeeded in blocking the request in order to avoid placing a further financial burden on the family. Whether such demands for reimbursement were routinely made, he adds, is something that must be looked into more closely. He assumes that distinctions also existed based on the nature of the measures involved.

Heiniger adds that with regard to vocational training costs, there is a case in the sources where a family was required to pay for the vocational training of an administrative detainee. Loretta Seglias comments that there does exist evidence that recourse was taken against families for the compensation of costs, that the authorities had the right to do that. The question of financing and thus also of the possibility of requiring a contribution from a person against whom an administrative detention order was issued, falls within the scope of the IEC's Research Area D. A member of the public draws attention the fact that the seizure of property belonging to detainees was a major issue. In one family, the speaker says, the sewing machine was seized. The mother of the family was no longer able to work as a seamstress and was thus unable to provide for her children, with the result that they, too, were then placed in administrative detention. These closing remarks demonstrate the importance of taking economic factors into account when discussing the use of administrative detention.