

**Independent expert commission
research programme
for conducting a scientific review
of administrative detention (IEC)**

1 June, 2015

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Preamble

The paper on hand was written by an IEC working group (L. Gschwend, G. Hauss, Th. Huonker, M. Lengwiler, A.-F. Praz) and has as its basis scientific recommendations from the round table as well as written input by B. Gnädinger, L. Gschwend, G. Hauss, Th. Huonker and A.-F. Praz. It serves as the basis for implementing the IEC research programme. Up until their implementation, the individual subprojects are to be elaborated on in more detail (inter alia using information on empirical case examples and concrete source material). The paper was discussed in IEC meetings on 30 March, 2015 and 21 April, 2015 and adopted unanimously on 26 May, 2015.

1. General

Within the scope of its research programme, the IEC is carrying out research into administrative detention, including its relationship to other coercive welfare measures and out-of-home residential placements, particularly custodial detention. The programme explores what ideas of country, state and society were the basis of the government measures. It will also take into account the biographical experience of those persons affected, their coping strategies and the way in which society dealt with coercive welfare measures in the area of administrative detention.

The aim of the research is to make transparent and evaluate the structure of government interventions; to name the institutions (organisations, networks) and individuals responsible; to characterise the affected group and document the personal ways they dealt with the situation. This also includes – as far as can be reconstructed – calculating the quantitative scope of the victim groups. The focus of the review is on contemporary history, which comprises events and developments since the 1930s up to the present. It will be necessary to refer back to the 19th century for some subjects.

The long-term communication of the findings is of key importance to the research programme. Beyond conventional communication instruments, knowledge sharing can also include the development of a digital sources database (e.g. from oral history interviews as well as diverse text, image and audiovisual sources, cf. research field A), a communication platform (for the publication of ongoing research findings), involvement in exhibition projects or the creation of a competence centre. The methodology of the IEC research programme follows an interdisciplinary approach. It also values participation by the persons affected and other witnesses.

The IEC considers itself to be a part of a broad network for reviewing the history of coercive welfare measures in Switzerland. They welcome other actors such as the Swiss National Science Foundation or cantons, cities and municipalities initiating and financing their own research activities. The IEC endeavours to establish an overview of the various research projects and to contribute to their networking.

2. Research groups and research fields

The research programme is divided by topic into four research fields (sections B, C, D, E) and one basic field (section A) that is relevant to all research fields. Work in each field is carried out by a specialised research group. The five fields are defined as follows:

- A. Sources database and communication platform (basic field)
- B. Overview and legal bases / legitimisation and delegitimation of administrative detention (research field)
- C. Legal practice and expertise (research field)
- D. Institutional practice (research field)
- E. Biographies and life stories (research field)

The individual research groups include four to five researchers with different levels of qualification: an operational leader (postdoctoral level), several scientific employees (master's degree or postdoctoral researcher) and scientific assistants (students with a bachelor's degree). The IEC ensures that interdisciplinary qualifications and ones in regional languages are adequately represented within the research groups. The supervision and management of the research groups is performed by five IEC committees, which are generally made up of three IEC members. Committees and research groups are interdisciplinary to the extent possible. Individual IEC members can be mandated for research management tasks by the IEC. However in this case, they are excluded from participating in the committee responsible for this research group.

The different research groups work closely together, particularly in the area of thematic interfaces and organisational synergies. The basic field A (sources database and communication platform) is of key importance to all other research fields, particularly as the basis for sources and research documentation. There is also a close contextual relationship between research field B (legal bases), C (legal practice and expertise), D (institutional practice) and E (biographies and life stories).

The following sections outline the thematic research fields and the corresponding research projects. As a rule, the individual research projects are supervised by a scientific staff member; several supervisors are also conceivable as an exception.

Basic field A: Sources database and communication platform

Committee: Beat Gnädinger, Thomas Huonker, Loretta Seglias

- A1. 'Online sources database/oral history database' project: The planned sources database will establish a central cross-cutting resource for the projects carried out by research fields B, C, D and E. The publication of the sources will take into account data privacy provisions. The database will comprise two areas:
 1. Intranet-based collection of oral history interviews with persons affected/victims as well as representatives of institutions (correctional institutions at various levels, including representatives of the judiciary). A larger and more representative number of interviews are to be collected here, which will be especially analysed in research field E. Where possible, interview data accessible from other research projects will also be integrated.
 2. Intranet-based repository with relevant archive sources: including autobiographical accounts ('ego documents'), image sources, audiovisual sources and diverse text sources (including recourse, expert opinion reports, letters, media publications, literary sources). The relevant legal sources are especially important (selection of laws, regulations, house rules, directives).
- A2. 'Online communication platform' project (in combination with the IEC internet website): The online communication platform will document the relevant research work for IEC's activities. This includes the corresponding status of research (i.e. bibliographies, reference texts, if applicable, also image documents and audiovisual documents), IEC publications (working papers) as well as information on relevant research networks (research projects, archives, researchers etc.). The communication platform is the central component of the IEC internet website and serves for communication with external partners and also the public. The platform has been designed as autonomous and independent of the stipulations of the Swiss Federal Administration.

Research field B: Overview and legal bases / legitimisation and delegitimation of administrative detention

Committee: Jacques Gasser, Lukas Gschwend, Anne-Françoise Praz

- B1. 'Statistical overview' project: The project reviews calculations or qualified estimations on the number of affected administrative detentions within the context of coercive welfare measures (above all from 1940). Where possible, the project also supplies information on gender ratios, mortality, education and the career perspectives of those affected by administrative detention, where applicable compared to other groups of affected persons. Existing estimations are to be taken into account here (e.g. to the cantons of St. Gallen, Bern und Zurich).
- B2. 'Legal bases' project: First and foremost the project takes a jurisprudential approach and includes a review of the canton's legal bases of administrative detention (from the mid-19th century, in laws relating to the poor, etc.) with special consideration given to the situation after 1963 (accession to the Council of Europe) and 1974 (accession to the ECHR). The relationship to the legal bases of guardianship and coercive children's wel-

fare measures as well as the types of detention of (youth) criminal law (such as article 14f. CH-aStGB (Swiss Criminal Code)) and the juvenile penal system are of interest here. Also to be taken into consideration are the inter-cantonal concordats as well as the role of inter-cantonal conferences (particularly the SODK Conference of Cantonal Social Services Directors). The examination of these legal bases is to be incorporated into the legal-historical context.

- B3. 'Legislation: political process and public debates' project: This project examines the public and political debates surrounding the legislation on administrative detention (in the tradition of debates on poverty and social welfare). Subjects to be examined are the reasons put forward for the measures, in particular geographical (cantonal) differences and their change over time, through to criticisms of administrative detention in the run up to the legislation of 1978/81. To be considered is the role of scientific expertise (medicine, psychiatry, social sciences) in the debates and their gender-specific dimensions as well as the limitations and instrumentalisation of different areas of expertise (in particular law and medicine). The process of legislation will be interpreted as the framework for governmental and institutional actions (including governmental custodianship, juvenile courts, observation wards, welfare for alcoholics, and social work schools, etc.). Finally, the international dimensions of legal debates (including international commissions for the penal system) are to be taken into consideration.
- B4. 'Societal engagement with administrative detention' project: The aim here is to examine the way in which the public and the media dealt with the issue of coercive welfare measures and out-of-home residential placements up until present times. This includes media incidents (scandals in the homes, publications), political discussions at federal, canton and municipal level as well as in organisations (professional associations, institutions), the presentation in (auto)biographies, literary representations and popular media (books, films, etc.) and the issue of rehabilitation and reparation. The study will investigate further attempts by the persons affected, the media and social movements (local campaigns) to make precarious situations public, as well as the conditions under which endeavours such as these met with public resonance or, alternatively, petered out. The aim is to examine when and how such endeavours caused state and private actors to question their courses of actions and initiate learning processes. How has the status of victims changed in the public debate in the last few decades? How did coercive welfare measures come to be increasingly in conflict with the widespread notions of a democratic state under the rule of law?

Research field C: Legal practice and expertise

Committee: Jacques Gasser, Lukas Gschwend, Thomas Huonker

- C1. 'Detention procedure and legal practice' project: The project, strongly based on jurisprudence, examines the procedure of administrative detention and other coercive welfare measures from the perspective of contemporary administrative and constitutional law. How was the procedure of administrative detention organised? Which authorities were involved? Which procedural laws were available to the persons affected (as well as their environment)? Which cantonal and federal means of legal redress were available and how were they utilised (including complaints to the Federal Council and the Federal Office of Justice)? When did legal counsel or lawyers have an influence? How were responsibilities regulated? How did procedural law and practice change over the course of time? The diversity of cantonal legislature and enforcement practices as well as the federal court jurisdiction are to be taken into consideration here. The relationship between administrative detention and forms of administrative detention (e.g. involuntary commit-

ment of adults, occasionally also youths, into psychiatric institutions by guardianship bodies or health authorities up to the 1980s) has still hardly been researched at all.

- C2. 'Justification figures, decision-making processes, scientific expertise' project: Firstly, the significance and the impact of specific prerequisites and scientifically based justifications and the concept of humankind contained therein are to be examined across all cantons. This includes such things as the basis behind detention measures for persons considered to be 'workshy', 'licentious', 'sexually instable' and 'alcoholic', the roots of which reach back at least into the 19th century. Analysis will include demonstrable strong bias relating to gender and also class within the stigmatisation and exclusion process as well as the role played by medical and other experts in addition to scientific interpretative patterns overall (psychiatry, including forensic 'welfare sciences', children and youth psychiatry, special education, eugenics, sterilisation/castration, medical trials, change and consequences of diagnoses as examples, inter alia). Secondly it will explore which categorisations led to which measures being initiated. Who were the actors (involved authorities, scientific experts, enquiry commissions and other actors)? What role did welfare practice play in the internment process? What were the intentions, concepts and strategies for action of the welfare practice, and those of the special educators within the context of correctional education or correctional work training? What type of cooperation existed between medicine and the law? The decision-making processes that led to administrative detention will be examined. What concrete form did the correctional mechanism take? What sort of reasoning accompanied the logic of the authorities (home principle vs. residential principle; within or outside the canton)? What scope for action was open to the persons affected? What was the composition of this group (including geographic differences and developments over time)? Finally, the international dimensions of scientific networks and discourse need to be taken into consideration.
- C3. 'Supervisory practice' project: The project examines the way in which state authorities perceived their supervisory obligations. It is concerned with the different supervisory structures applied by the individual institutions. The issue touches on the extent to which control gaps were contingent on structural factors or certain constellations of actors. The diversity of the cantonal supervisory regimes is to be taken into consideration here. The significance of supervisory regulations covering administrative welfare is to be examined in depth. The next issue to be examined will be the opportunities open to the detainees to have their concerns and complaints heard. It is equally important to explore the extent to which failure to act by the authorities intensified the isolation and impotence experienced by the persons affected.

Research field D: Institutional practice

Committee: Gisela Hauss, Martin Lengwiler, Anne-Françoise Praz

- D1. 'Institutional practice, involuntary detention' (incl. administrative perspectives): The aim here is to carry out a detailed analysis of the sanctions in institutions that are typical for these types of sanctions (above all forced labour institutions), for example in the institutions, St. Johannsen (BE), Hindelbank (BE), Bitzi/Mosnang (SG) and Bellechasse (FR), incorporating sources already identified (inter alia Bellechasse). The experiences of the persons affected, the daily conditions in the institutions as well as institutional factors are all to be included equally. Institutions that were indirectly affected by administrative detention (including homes for babies) are also to be taken into consideration. The project will examine a number of exemplary institutions, which are as representative as possible, based on case studies and embed these into an overarching history of asylums and institutions (forced labour institutions, institutions for the poor, poor houses, worker colonies,

internment camps, institutions for alcoholics, asylums for the poor and the ill, institutions for epileptics, psychiatric clinics, penal institutions, youth detention centres, institutions for the handicapped, inter alia.). It will examine the profiles of the educators or, respectively, the supervisors in the institutions. The project will be carried out in close cooperation with the E1 project ('Experiences in homes and institutions').

- D2. 'Discharge practice' project: The project follows on from the D1 project and examines the process of discharge from the institutions, i.e. its stipulations, conditions and the aftermath (subsequent welfare, exclusion orders, repatriation, expatriation). The project will examine a number of exemplary institutions, which are as representative as possible, based on case studies and embed these into an overarching history of asylums and institutions (forced labour institutions, institutions for the poor, poor houses, worker colonies, internment camps, institutions for alcoholics, asylums for the poor and the ill, institutions for epileptics, psychiatric clinics, penal institutions, youth detention centres, institutions for the handicapped, inter alia.). The project will be carried out in close cooperation with the E1 project ('Experiences in homes and institutions').
- D3. 'Economic dimensions of administrative detention': The project examines the economic dimensions of administrative detention, both with reference to governmental actions (cost for board economics, economisation of the detention costs, the general influence of financial circumstances – of cantons, municipalities, the authorities and institutions – on the practice), on the running of the institution (institutional housekeeping, income from payment for board or the sale of labour services or products from the institution, land improvements, subsidies from the federation and cantons etc.) as well as the financial situation of the persons affected (payroll administration, bank and savings accounts etc.).

Research field E: Biographies and life stories

Committee: Gisela Hauss, Martin Lengwiler, Loretta Seglias

- E1. 'Experiences in homes and institutions' project: From a biographical and biographical-historical perspective, this project will analyse the experiences of the victims of administrative detention and the corresponding residence in the institutions, and also will incorporate the perspectives of institution staff and management. The bases of this analysis will be oral history interviews with the victims as well as written sources in which the perspectives of the victims are recorded (complaints, escape reports, correspondence, legal cases etc., depending on the sources in the institutions, cf. Bellechasse case study). The experiences of the persons affected will be reconstructed at both the psychological and physical level (inter alia state of health, etc.). The empirical evidence to support the project includes oral history interviews collected within the scope of the A1 project as well as personal interviews. It will be carried out in close cooperation with the D1 project ('Institutional practice, involuntary detention') and the D2 project ('Discharge practice').
- E2 'Individual long-term consequences' project: This project has its basis in the social sciences and will examine the long-term consequences of administrative detention for the persons affected and the following generations from a sociological and also, if applicable, from a socio-psychological perspective. The aim is to demonstrate conditions and strategies of dealing with personal biographies as well as different coping strategies. The factors that made it easier or more difficult to deal with their personal history will be identified with reference to individual life stories and applied to the following generations (vulnerability and resilience of the persons affected). The focus here is on the biographical transi-

tion between the life stages and contexts. Included in the effects are also life-long education and career disadvantages and discrimination, increased morbidity and risk of suicide, homelessness, poverty and the impact on personal relationships. An examination will also be carried out regarding the issue of what opportunities and difficulties were associated with individual coping strategies (inter alia inspection of records, dealing with descriptions of lives written by the institution and stigmatisation, confrontation with former settings and persons involved). The intentional and non-intentional impacts of detention are also of interest here. The empirical evidence to support the project includes oral history interviews collected within the scope of the A1 project as well as personal interviews.

3. Mediation/ communication / network / round table

One key task of the IEC is to communicate its findings to the broader public and target audiences with special needs. The IEC will compose a mediation and communication concept by summer/autumn 2015. The following media and instruments should be looked into for communication:

- Round table: The IEC implements its research programme in close collaboration with the round table or, respectively, with representatives from victim groups. As the first step, the round table will be provided with information on the research programme and it will be discussed with members of the round table within the scope of a workshop.
- Active media work: The IEC will ensure regular media contact; will publish a newsletter (e.g. bi-annually or quarterly) and regular intermediary reports (e.g. annually).
- Repository: The IEC will establish an intranet-based collection of sources and documents, including contemporary eye-witness documents (inter alia oral history interviews), if applicable, discussion forums, etc.
- Internet presence: The IEC will establish a website as soon as possible, which will be used for ongoing communication of activities by the IEC and regular publication of (intermediate) results.
- Conferences, workshops, speeches, closed-door meetings: The IEC will organise regular events (generally public) in order to communicate with the different target groups: internal commission meetings with involved researchers; scientific conferences with interested scientists, nationally and internationally; participatory events with persons affected, witnesses, representatives of the institutions, with input from the round table, etc.; events with actors from politics and administration (children and adult protective services, youth services; events with representatives of the media; events with actors from the education sector (schools, vocational schools, teachers colleges/publishers of teaching material, specialist areas such as social work, special education, psychiatry, psychology, etc.).
- Exhibition projects: The IEC can participate in exhibition projects.
- Final report: The IEC will publish the results of research in compliance with the respective authorship in the form of a final report, in research reports and monographs (if applicable in a publication series) as well as in suggestions for measures based on the results. Publications may be published in print or electronically, if applicable in cooperation with a publisher.

4. International embedment

The findings from IEC research on the history of administrative detention will be embedded within the context of international research. This comparative perspective is of key importance for evaluating the research results. In the foreground are other European countries with a comparative history of coercive welfare measures and/or history of institutions that is plagued by misunderstanding (inter alia Austria, Germany, Ireland, Canada/Quebec, possibly France).

Embedding within the international research context will be ensured by means of international appraisal of the research programme as well as through workshops and conferences. The details will be specified within the scope of the mediation and communication concept (cf. chapter 3).