



**LOW-LEVEL PUNISHMENT
IN SWITZERLAND**

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HOW RACIAL PROFILING LEADS TO PUNISHMENT

Over the last years, activists in Switzerland such as the Allianz Gegen Racial Profiling have challenged racial profiling by the policing. They have called attention to how racial profiling can lead to punishment and criminalization.

The vast majority of people racially profiled, stopped, and interrogated by the police are unlikely to face serious criminal charges. Many will also not walk away free: police often charge people with low-level offenses, with serious consequences for the people impacted. In Switzerland, these charges are usually punished with fines. Fine sentences leave people with a criminal record; they also can cause financial strain and lead to incarceration for people who cannot pay. Low-level sentences are also imposed by systems with gross procedural deficiencies, often based on little or no evidence of wrongful behavior. The harms of misdemeanor punishment systems are also not distributed equally: over half of all fine sentences in Switzerland are against people labeled as “foreigners” in the Swiss data. Taken together, the problems of the racialized systems of low-level punishment necessitate urgent action. Activists against racial profiling (such as the Allianz) have challenged conventional narratives of policing as neutral and colorblind, laying the groundwork for resisting racialized punishment.

OVERVIEW OF LOW-LEVEL PUNISHMENT IN SWITZERLAND

In 2020, the Swiss criminal legal system sentenced a total of 95,263 people. Despite representing only about 25% of the total population, people labeled as “foreigners” in the Swiss data accounted for 48,766—or over 50%—of sentenced people.ⁱ For low-level cases sentenced with monetary sanctions—the commonly-imposed sentenceⁱⁱ—over 50% of cases (44,024 of 81,516) were against “foreigners”.ⁱⁱⁱ The disparity—the targeting of “foreigners”, many of whom are likely from racialized groups—is staggering.

Why are these disparities so stark? Or, asked another way, how do people who are controlled by the police end up with fines? As has been the case with members of the Allianz, fines can be imposed for no reason at all: Police can easily charge people with broad offenses such as “failure to comply with a police order” or “illegal behavior towards a police officer” simply because they want to. In addition, almost 14,000 people in 2020 were sentenced under the Foreign Nationals and Integration Act, which criminalizes people based on migration status.

Many more people are sentenced with crimes of poverty including fare evasion and petty theft; people are also criminalized for their lack of access to housing. The European Court of Human Rights recently struck down Geneva’s blanket ban on begging, finding a human right to beg based in a person’s right to privacy. While the city of Geneva can no longer ban begging per se, they may do so if “proportionate”, and the ECHR failed to decide on the city’s racially discriminatory targeting of the person, who is Roma. Therefore, prosecutions based on discrimination and the criminalization of poverty are still possible in Switzerland.

Others controlled by police face traffic offenses and charges of drug possession.^{iv} While the incidence of many criminalized acts are not likely to be higher among “foreigners”, racialized “foreigners” are more likely to be charged because they are targeted for police stops. Taken together, these patterns of punishment call in to question Switzerland’s entire system of low-level punishment: a system in which people are penalized because of their race; punished because of unequal systems.^v

At worst, people who cannot pay face prison. An estimated 4,000-4,500 people go to prison each year in Switzerland for failing to pay their fines.^{vi} As in Germany, it is likely the case that people simply cannot pay: As one study showed, people charged with fare evasion (or failing to buy a public transportation ticket) or traffic offenses made up 41% of people who went to prison for fine default.^{vii} Although preliminary research suggests that data on the racial disparities of failing to pay fines are unavailable, Section 41(1) of the Swiss Criminal Code provides that a person can be put in prison for up to six months if they seem unable to pay a fine—even if the court or prosecutor would otherwise impose fines. In practice, this rule is widely used against people without an official address in Switzerland,^{viii} with possible disparate impacts on migrants and/or racialized people.

Even if people pay, they often do so by relying on friends and family (if so lucky); others have their property seized. Despite Switzerland's introduction of day fines, a way of setting fine amounts according to ability to pay,^{ix} people face high fines, and additional court costs and fees. That a charge is less serious also does not spare people from a criminal record, and having a criminal record “can hinder renting an apartment, the possibility to practice certain professions, or the opening of a bank account.”^x

The courts are not a robust check on racialized policing and over-charging. Rather, in Switzerland, low-level cases are sentenced by penal order, or a type of summary proceeding in which people are denied their right to a trial before a court.^{xi} Instead, penal orders are completely decided by prosecutors, with very little opportunity for the person being charged or a judge to intervene to change the course of case. People rarely have access to a lawyer or translators. Numerous studies have found a high incidence of wrongful conviction in cases decided by penal order.^{xii}

In summary, people subject to racist police controls can often be fined for little reason at all, and such charges can “stick” and result in high fines and fees because the Swiss criminal legal system processes these cases for efficiency rather than justice. The result is a system of control that generates harm, including at considerable financial costs to impacted people. In 2020 alone, the Swiss government imposed a total of 94,487,298 CHF in fines, excluding suspended monetary sanctions.

WHAT CAN WE DO?

- **Organize:** One step in our political education could be to expand on the preliminary research above with both more engagement with the data and literature, and, perhaps more importantly, dialogue with grassroots and community groups, people who have been racially profiled, and others so that we may organize by learning together how people are experiencing these systems and what actions we may take against them. This could take the form of educational webinars, cross-border grassroots engagement, and more.
- **Documentation and data:** We may consider documentation projects. Some ideas include:
 - Sharing the stories of people who have been racially profiled to show the criminal legal system consequences people face after a racist police stop. We may gather such information across countries.
 - Developing grassroots-driven data collection to show the racial disparities of who is being charged and sentenced in these systems (and how severely). For example, we may try to get data about who is incarcerated for not paying; survey people who have been find to learn about racial disparities; and more.
 - Documentation to show the racial injustices and biases in these systems.
- **Action and Strategy.** We may identify actions and develop joint strategy. Future actions could include campaigns against specific types of charges or challenging summary procedures.

Endnotes

- i Data from 2020 reflect some reductions in criminal sentencing and other changes in patterns. These changes are attributed to the COVID-19 pandemic and may not reflect long-term shifts in the system.
<https://www.bfs.admin.ch/bfs/en/home/statistics/crime-criminal-justice.assetdetail.17145512.html>. This concept note also only provides a snapshot of the data. More analysis possible and needed. For example, it is unclear whether people charged under Article 26a of the APV (as was the case for Mohamed Wa Baile) would be captured in this data.
- ii The sentencing of fines in Switzerland is a bit complex, but in summary, many people sentenced on low-level cases face day fines (fines set according to a person's income) along with immediately payable fines. The day fine component is usually suspended, meaning a person would not have to pay or serve time unless they came into contact with the criminal legal system again; the other fines are payable immediately. Non-payment on these financial penalties can lead to incarceration.
- iii As with all similar data in Europe, these numbers are an imprecise proxy. They are included here as a preliminary picture of the racialization of punishment in Switzerland.
- iv Gwladys Gilliéron, *Wrongful Convictions in Switzerland: A Problem of Summary Proceedings*, 80 UNIVERSITY OF CINCINNATI LAW REVIEW (2013), <https://scholarship.law.uc.edu/uclr/vol80/iss4/5>.
- v Data show that 31079 of the 81504 total day fine cases (suspended and not) receive units of up to one month; another 38420 are sentenced to up to three months.
- vi ELENA KANTOROWICZ-REZNICHENKO & MICHAEL FAURE, DAY FINES IN EUROPE: ASSESSING INCOME-BASED SANCTIONS IN CRIMINAL JUSTICE SYSTEMS (2021).
- vii ELENA KANTOROWICZ-REZNICHENKO & MICHAEL FAURE, DAY FINES IN EUROPE: ASSESSING INCOME-BASED SANCTIONS IN CRIMINAL JUSTICE SYSTEMS (2021).
- viii ELENA KANTOROWICZ-REZNICHENKO & MICHAEL FAURE, DAY FINES IN EUROPE: ASSESSING INCOME-BASED SANCTIONS IN CRIMINAL JUSTICE SYSTEMS (2021).
- ix The median daily amount for suspended day fines is 50 CHF; the median daily amount for unsuspended day fines is 35 CHF. Research suggests gaps in how these amounts are calculated and whether they accurately reflect people's circumstances. *Id.* Judges and prosecutors are supposed to take ability to pay in to account in setting fines other than day fines but this does not seem to happen in a robust way in practice. *Id.*
- x Raluca Enescu, *Penal Orders and the Role of Prosecutors in Switzerland*, 26 JOURNAL OF LEGAL STUDIES "VASILE GOLDIȘ" 125–141 (2020).
- xi The number of penal orders issued in Switzerland has been steadily increasing, from 93,928 in 2014 to 105,730 in 2016. *Id.*
- xii Gwladys Gilliéron, *Wrongful Convictions in Switzerland: A Problem of Summary Proceedings*, 80 UNIVERSITY OF CINCINNATI LAW REVIEW (2013), <https://scholarship.law.uc.edu/uclr/vol80/iss4/5>; Raluca Enescu, *Penal Orders and the Role of Prosecutors in Switzerland*, 26 JOURNAL OF LEGAL STUDIES "VASILE GOLDIȘ" 125–141 (2020).