Chapter 4

Who Ought to Stay? Asylum Policy and Protest Culture in Switzerland

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4.1 Introduction

Is Switzerland a country of political asylum? A controversial question at first sight. After all, Switzerland has built its humanitarian reputation on the principle of neutrality and the actions of the International Red Cross (Parini 1997b, 51). Moreover, the Swiss authorities offered asylum to numerous political activists and intellectuals during the nineteenth century, mostly middle- and upper-class Western Europeans escaping struggles and political conflicts within European countries (Portmann-Tinguely/von Cranach 2016). During the first half of the twentieth century, Switzerland offered shelter to opponents of communist regimes (Efionayi-Mäder 2003, 5). So why does Parini (1997b, 51) assert that Switzerland's reputation as a land of asylum is a "myth that has been challenged by history"?

This chapter aims to provide contextual elements to understand pro- and anti-deportation protests in Switzerland. First, it discusses the issue of asylum in the division within Swiss society, between partisans of either closed or open borders. Then, it examines the current Swiss asylum policy which is at the center of debate and criticism for both groups of protesters while providing an historical overview of the revisions and agreements that have shaped it since the 1990s. This section examines the different stages within Swiss asylum policy: the refugee definition, the criteria for inadmissible and unfounded applications, the role of deportations in the asylum system and the issue of return assistance, and ultimately the legal support available to potential deportees either to stay in Switzerland or to return when deportation could not be avoided. To understand who is the focus on action for the protesters, the following section describes the state actors involved in the

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implementation of deportation policy and the mechanisms of executive federalism. The fourth and last section discusses the overall Swiss protest culture and reveals the advantages and constraints of direct democracy in the case of civil society protests.

4.2 The Swiss Asylum Policy

Since the entry into force of the first Swiss Asylum Act (AsylA) in 1981, the issue of asylum has been “one of the most discussed themes in the Swiss political agenda” (Parini/Gianni 2005, 209). Although asylum is protected by international law, it has become a sensitive political issue in Switzerland (D’Amato 2008, 178). In fact, from 1981 to 2008, Swiss authorities conducted 15 partial or total revisions of the law (Piguet 2009). These revisions have often led to the adoption of more restrictive measures, as a result of increasing suspicion over the sincerity of asylum applicants’¹ motives in the public sphere (see below). In fact, Swiss citizens are often asked to vote on the revision of the asylum policy. Swiss direct democracy allows its citizens to have an influential voice in the political system. They can further use the instruments of direct democracy such as popular initiatives and referendums to express their opinion. As explained by Kriesi and Wisler:

The popular initiative exists on the federal level since 1891. It allows 100,000 citizens, by signing a formal proposition, to demand a constitutional amendment as well as to propose the alteration or removal of an existing provision. [...] Contrary to the referendum, which intervenes at the end of a decision making process, the initiative forms its point of departure. (1996, 20)

Adopted by the Swiss population on February 9, 2014, the federal popular initiative “against massive immigration” challenges the principle of the free movement of persons within the European Union (EU) and the 1951 Geneva Convention. Launched by the *Swiss People’s Party* (SVP/UDC), a nationalist and traditionalist right-wing party, it suggests establishing quotas for immigration to Switzerland, as well as for asylum. Given the consequences of such a proposal, which puts the Swiss government at odds with the EU and compromises the bilateral treaties, this popular initiative has not been fully implemented yet. Nonetheless, this voting outcome is symptomatic of changes in policies made by the Swiss authorities with the introduction of the AsylA. Until 1981, Switzerland did not have a proper asylum law and relied exclusively on the Geneva Convention. Accordingly, Swiss authorities granted asylum and refugee status to Hungarians in the 1950s, Tibetans in the 1960s, and Cambodian, Laotian, and Vietnamese “boat people” in the late 1970s (Piguet 2009). From the 1980s onwards, the arrival of people coming mostly from

¹ Because the term “asylum seeker” refers to a legal status in Switzerland (permit N), which means that the application is being processed, I use the general term “asylum applicant” to refer to any person requesting asylum in Switzerland, independently of the stage in the acceptance procedure (I will explain this more in detail in the next sub-sections).

the “global South” (D’Amato 2008, 178), has contributed to the overlapping of anti-immigration discourses—given by nationalist parties—with the field of asylum. Additionally, in 1991, Switzerland faced its first so-called asylum crisis, which occurred at a time of unprecedented number of asylum requests² related to the war that followed the breakup of Yugoslavia (Piguet 2009, 79). Consequences were twofold: on the one hand, in 1995 Switzerland stopped accepting refugee quotas established by the United Nations High Commissioner for Refugees (ibid.). On the other hand, asylum applicants from Africa and the Balkan regions represented henceforth the Others, replacing Italian labor migrants in the Swiss imagination (Maire/Garufio 2013) following a shift in the collective representation of “cultural distance” (D’Amato 2010, 136).

Against this background, the left wing unites such groups as No Border activists, Dublin challengers, relief organizations, and NGOs in order to ensure that authorities respect their “moral duty to assist” (Parini 1997b, 62). Thereby, pro-migrant protests by civil society actors offer alternative discourses that aim to broaden the refugee definition in opposition to its ever-narrower interpretation by the Swiss authorities. Swiss society appears mainly divided between two leading political forces, the Socialist Party and the SVP/UDC. Each holds different perspectives on whether the definition of a refugee shall be inclusive or exclusive, which determines who should be granted asylum and who should leave the country. Overall, the issue of asylum highlights the tensions and power relations within past and contemporary Swiss history regarding the question: who ought to stay? Protest culture thus plays a major role in the very emotional field of asylum, in which contentions, challenges, and negotiations operate behind the scenes of the humanitarian reputation of Switzerland.

4.2.1 *The Refugee Definition*

Swiss asylum law is grounded both on the Geneva Convention (signed in 1954) and the 1967 Protocol relating to the Status of Refugees, which entered into force in Switzerland in 1968 (Bersier 1991, 31). Indeed, the Swiss legal system is monist, meaning that international standards directly apply in the national law. Hence, Switzerland bases its refugee definition on the one suggested by the Geneva Convention. Accordingly, Swiss authorities grant asylum to those “who in their native country or in their country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or due to their political opinions” (Art. 3 para. 1 AsylA). Since this definition fails to mention gender-based persecutions, as highlighted by some political parties and women’s organizations (ODM 2005, 7), the Swiss government decided in 1998 to add in a

²Efionayi-Mäder (2003, 5) notes that the number of asylum applications grew from about 1000 per year before the 1980s to a peak of 40,000 in 1991 due to the Yugoslav Wars.

Table 4.1 Status and permit according to the Swiss AsylA and their equivalent in the EU legislation

Swiss permit	Status in Swiss AsylA	Status in EU legislation
None	Inadmissible application:	Inadmissible application:
	Dublin transfer	Dublin transfer
	Dismissed applicant	<i>No equivalent</i>
	Unfounded application:	Unfounded application (including manifestly unfounded application ^a):
	Rejected asylum seeker	Rejected applicant
N	Asylum seeker	Person being a subject of a pending application
S	People in need of temporary protection	Person granted temporary protection status
F	Provisionally admitted person	Person granted subsidiary protection status
F	Provisionally admitted refugee (according to the Geneva convention)	<i>No equivalent</i>
B	Recognized refugee (according to the AsylA)	Person granted refugee status
B	Person granted residence permit for humanitarian reasons	Person granted authorization to stay for humanitarian reasons

Sources: EUROSTAT, Matthey (2012)

^aManifestly unfounded applications are an EU sub-category of unfounded applications (Art. 32 para. 2, Dir. 2013/32/EU) which does not exist in Swiss law. Thus, clearly fraudulent applications are likely to be considered as inadmissible applications in Switzerland without further distinction, and thereby are excluded beforehand from any ordinary asylum proceedings

second paragraph that “Motives for seeking asylum specific to women must be taken into account” (Art. 3 para. 2 AsylA).

In Switzerland, however, a distinction is made between “recognized refugees” (permit B; see Table 4.1) and “provisionally admitted refugees” (permit F). Recognized refugees are persons granted asylum, whose personal persecution has been attested. “Provisionally admitted refugees” are persons who qualify for the refugee status according to the Geneva Convention but not in the sense of the Swiss AsylA. This latter category—which has no equivalent in the European legislation (Matthey 2012, 448)—includes, for instance, persons who have the quality of refugees because of their post-exile conduct (e.g., political activism, public coming-out; Art. 54 AsylA). Another telling example is the case of deserters. Until 2012, Eritrean asylum applicants who claimed grounds based on desertion were systematically recognized as refugees (permit B), in accordance with the 2005 decision of the Federal Administrative Court (TAF 2006/3–029). As a result, the number of asylum requests of Eritrean deserters strongly increased in Switzerland. In 2012, though, Swiss citizens adopted by vote the proposal of the government to revise the AsylA in order to add a statement in the refugee definition that those who “have refused to perform military service or have deserted” are no longer considered refugees

(Art. 3 para. 3 AsylA). The number of Eritrean refugees granted the less advantageous status of admission (permit F) subsequently increased in 1 year by 52% (SEM 2015).

Since Switzerland is not an EU member state, the Swiss asylum policy is not required to include all EU directives regarding asylum. Nonetheless, the following instruments are fully incorporated into the Swiss legal system (Matthey 2012, 35–38): the EU Charter of Fundamental Rights, the directive 2001/55/CE on the temporary protection granted to a group of people in need (see permit S), the Dublin Convention (see below), the directive 2003/9/CE guaranteeing minimum standards for reception conditions, the directive 2008/115/CE on common standards and procedures for returning illegally staying third-country nationals, the directive 2011/95/UE on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, and ultimately the directive 2013/32/EU on common procedures for granting and withdrawing international protection. Additionally, the Swiss government has decided to collaborate with the European Asylum Support Office, part of the Common European Asylum System, despite this not being required within the Schengen and Dublin agreements.

4.2.2 *The Right to Seek Asylum*

Although the right to *seek* asylum is a fundamental human right (Art. 14 Universal Declaration of Human Rights), the practices of some European governments seem to disallow it (Schuster 2003, 234). This is, for instance, true with the Swiss asylum policy. In contrast to the EU legislation in which all asylum applicants (except Dublin cases) are admitted to the ordinary procedure, Switzerland distinguishes between two categories of applications. Yet, only one category gives access to the Swiss admission procedure: persons with the “asylum seeker” legal status (permit N), meaning that they may qualify for the granting of asylum because they indicated “that they are seeking protection in Switzerland from persecution elsewhere” (i.e., definition of an application for asylum, Art. 18 AsylA). Accordingly, their asylum application is materially examined in depth by the Swiss authorities. In case they do not fulfil the aforementioned refugee definition in the sense of the Swiss AsylA (including in the sense of the Geneva Convention), their application is considered unfounded and they become “rejected asylum seekers”.

Despite some overlapping within the EU directive 2005/85/CE (Matthey 2012, 257; now 2013/32/EU), unfounded applications need to be distinguished in Switzerland from *inadmissible* applications, since this category does not allow to the ordinary procedure, and thereby excludes some asylum applicants from the “asylum seeker” legal status (permit N). Therefore, we call them “dismissed applicants” to differentiate them from “rejected asylum seekers”. Indeed, the 1990 revision of the AsylA introduced the possibility of dismissing asylum applications through “accelerated processing” (read: shortened; *ibid.*, 139) in response to the first “asylum crisis” mentioned earlier. It states that applications can be formally

dismissed—that is, are not considered on their merits. For instance, an application is considered inadmissible if the applicant refuses or fails to cooperate (Art. 8 para. 3bis AsylA), likewise if economical or medical motives are claimed for asylum (Art. 31a para. 3 AsylA). Moreover, since 1990, the Swiss government is allowed to establish a list of presumably “safe countries”, where it is assumed that there will be no persecutions (Art. 6a para 2 let. a AsylA). Accordingly, asylum applications of persons who are native or have travelled through those countries are dismissed, unless they can prove being victim of persecution (Matthey 2012, 58). Jurisprudence has, however, shown that countries of origin and third countries were categorized as safe if Swiss authorities assessed that there are possibilities of escape within the country (II. Politique intérieure et extérieure 1993, 103). Several civil society actors such as the Swiss Refugee Council (now OSAR) and Amnesty International contested the criteria of “safe countries” assessment (ibid.). Despite public criticism, Switzerland signed an agreement with Sri Lanka in 1994 for the resumption “in security and dignity” of deportations (III. Politique intérieure et extérieure 1995, 90).

The entry into force of the 1998 Federal Decree on Urgent Measures for Dealing with Asylum Seekers and Foreign Nationals further allows the Swiss government to systematically dismiss asylum applicants who are (truthfully or fictitiously) undocumented³ (Parini/Gianni 2005, 220). This is the first time that asylum applications were dismissed on formal grounds such as the absence of identity documents (Matthey 2012, 60). Again, this decree was established in response to massive arrivals (up by 72.2% in 1997–1998) of Kosovan asylum applicants fleeing war in their homeland. The 1998 revision of AsylA also reduced the number of days (30 to 5) during which a dismissed applicant can appeal (ibid.). Consequently, appeal against the authorities’ decision became more difficult and selective, since it limits the access to those dismissed applicants who can afford the cost of a lawyer (or receive legal assistance from NGOs) in a very short period of time.

Another case of inadmissible applications are Dublin transfers. In contrast to the other aforementioned situations for dismissal, Dublin cases are dismissed on formal grounds without any material examination. Four years after signing the Schengen agreement, Swiss deportation policy faced a new era with the enactment in 2008 of the Dublin Convention, involving the deportation of asylum applicants to the EU member state where they first sought asylum (Art. 64, paragraph 2 Federal Act on Foreign Nationals, FNA). However, the Dublin Convention also has its constraints. First, Swiss authorities had to take the asylum applicants from other European countries who first requested asylum in Switzerland. Second, Swiss authorities are obliged to examine the asylum applications of those who were not deported to a member state within the 6-month time limit. Nonetheless, Swiss authorities point out that:

³For the sake of clarity, I use the term “undocumented” to refer to foreigners without identity papers, and “irregular” for illegally staying foreigners in Switzerland (whether they are undocumented or not). For a discussion on the issue of terminology, see Della Torre (2016).

Collaboration with the Dublin states works well in principle. By virtue of the [Dublin Convention], Switzerland was able to transmit significantly more cases to other States than it had itself to admit. (DFJP 2015, 37)

Being refused the legal status of “asylum seeker” (permit N), persons with inadmissible or unfounded applications both enter the category of *sans-papiers*, that is, irregular migrants. Although they are threatened with immediate deportation (Piguet 2009) in the sense of the aforementioned EU returns directive 2008/115/CE (Art. 64 para. 1 FNA), the principle of non-refoulement in the sense of Art. 3 of the European Convention on Human Rights ensures that the risks irregular migrants might encounter in their country of origin or in a third country is assessed prior to any deportation (UNHCR 1997). As stated in Art. 83, paragraph 1 FNA, “[i]f the enforcement of removal or expulsion is not possible, not permitted or not reasonable”, Swiss authorities must order provisional admission (permit F). Permit F for “provisionally admitted persons” was introduced in 1987 (Ruedin/Efionayi-Mäder 2014). As stated by Parini and Gianni (2005, 210–211; original emphasis), permit F “allows Switzerland, while fulfilling its duties of relief to people in distress, to ensure that these people do not settle.” However, what was meant to be a short-term compromise has become a long-term status. In the Swiss imagination, “provisionally admitted persons” are awaiting deportation. In reality, however, the latter often live in Switzerland for more than 7 years (ODM 2013) and are rarely threatened with deportation. Given this fact, the life conditions related to the permit F (e.g., integration, work, and family reunification) have been improved in the 2008 FNA (Wichmann et al. 2011, 83).

Figure 4.1 shows the number of negative decisions to grant asylum has followed the number of asylum applications. Negative decisions include inadmissible and unfounded applications, as well as the number of “provisionally admitted persons” (permit F). Moreover, we observe that throughout the 1990s and up to 2013, Swiss authorities delivered a relatively stable number (>4000) of residence permits (permit B) and provisional admission to refugees (permit F; i.e., positive decisions). In other words, despite an overall increase in the number of asylum applicants (for instance during the Yugoslav Wars in the early 1990s), the number of positive decisions has not fluctuated much.

4.2.3 Deportation and the So-Called Bogus Refugee

Threat of deportation is considered the “ultimate instrument” to guarantee civil obedience and respect of the asylum system (Wicker 2010, 241). Swiss authorities do not hide their deportation policy. This strategy is mobilized as a dissuasive message for economic migrants tempted to enter Switzerland by requesting asylum. Indeed, because of the restrictive Swiss migration policy, asylum is “the principle manner of entry for nationals of non-European countries to stay permanently on Swiss territory” (Fresia et al. 2013, 12). Consequently, “refugee politics” have been reframed

Fig. 4.1 Asylum applications and decisions in Switzerland, 1994–2015. (Compiled by the author based on SEM 2013; SYMIC 2016)

as an “asylum problem” (Efionayi-Mäder 2003, 5). Public discourse thus distinguishes between “genuine refugees” and “bogus refugees” (Parini/Gianni 2005, 229). People who apply for asylum are called *asylum seekers* instead of political refugees. The latter status is only granted to those who are legally *recognized* as such (permit B or F). Hence, these distinctive terms mark the power of the state to determine who is entitled to its protection (Efionayi-Mäder 2003, 5). Accordingly, it highlights who is the holder of rights: it is the right of the state to grant asylum and not the right of the applicant to receive it.

To be able to initiate the deportation procedure, Swiss authorities must identify both the country of origin and prior travel history of the undocumented migrants. Consequently, some asylum applicants hide their real names and their identity documents as protection against what they fear are poor chances of receiving refugee status (Piguet 2009). Then, some countries such as Eritrea, Cuba and Algeria do not allow the return of their exiled citizens by force. Thus, Swiss authorities cannot deport natives of those countries. Based on this knowledge, some Moroccan and Tunisian asylum applicants declare themselves Algerian in order to avoid deportation. However, Swiss authorities have reacted to this strategy by hiring Algerian interpreters whose mission is to identify the “bogus” Algerians by their accent. More recently, recognized refugees (permit B) might also be subjected to deportation. In 2010, Swiss voters approved the federal popular initiative of the SVP/UDC, requiring the incorporation into the Swiss Constitution of the “automatic deporta-

tion of foreign criminals”. This popular initiative—whose legal provisions entered into force in October, 2016—demands the strengthening of the FNA which already stipulates the revocation (under certain conditions) of the residence permit for convicted foreigners (Wicker 2010, 231). According to this, administrative and legal authorities can revoke the residence permit of any foreigner who either received a minimum 12-month sentence for criminal offences (Art. 62, letters b and c, and Art. 63, letter b FNA) or intentionally derived long-term social security benefits (Art. 62, letter e, and Art. 63, letter c FNA). However, being protected by the principle of non-refoulement, recognized refugees will be deported only for serious criminal offence (such as terrorism; Art. 63 para. 2 AsylA).⁴

Under certain conditions, return assistance is offered before proceeding to deportation. Introduced in the early 1990s, return assistance provides financial help for so-called voluntary departures, meaning a return to the country of origin or third country on a commercial flight, without being held by physical restraints. In return, dismissed applicants and rejected asylum seekers receive financial support for a new start in life. In case of refusal to either sign for return assistance or to leave Switzerland, irregular migrants can be put into administrative detention for disobedience and threatened with deportation. Indeed, in 1995 the revision of the Federal Act of March 26, 1931, on the Residence and Permanent Settlement of Foreign Nationals (LSEE) established measures of constraint to “allow authorities to place under detention any migrants (and their families) who might intend to evade the administrative decision of deportation” (Parini/Gianni 2005, 216). This procedure was established of as a preventive measure against the risk of losing from the authorities’ radars the dismissed applicants and rejected asylum seekers who would go into hiding. This measure was further strengthened with the partial revision of the AsylA in 2006, which aimed “to put an end to the abuse currently observed in the field of asylum and resolve the problems associated with the repatriation of [dismissed and rejected asylum seekers]”.⁵

Figure 4.2 shows that the assistance policy of “voluntary departure”—less expensive to the state than deportations (Matthey 2012, 273)—was relatively successful in the 1990s. In fact, the number of assisted returns was higher than deportations (to countries of origin or third countries). Assisted return peaked in 2000 when 25,548 persons agreed to exit Switzerland after the revocation of their provisional admission (permit F) at the end of the civil war in Kosovo. Since 2002, however, deportations have outnumbered assisted returns (with two exceptions in 2012 and 2013), and thus the assistance policy of “voluntary departure”—which was more generous in the early 2000s for natives of the Balkan regions than today—seems to have reached its limit.

⁴The deportation order will not apply to the spouse and the children (Art. 63 para. 4 AsylA).

⁵https://www.sem.admin.ch/sem/fr/home/aktuell/gesetzgebung/archiv/teilrev_asylg.html (accessed March 3, 2016).

Fig. 4.2 Deportations (to countries of origin or third countries), Dublin transfers and assisted returns from Switzerland, 1994–2015. (Compiled by the author based on SYMIC 2016)

4.2.4 Legal Support to Stay or Return

There are two ways of obtaining a residence permit (permit B, see Fig. 4.3). First, the opportunity *to stay* depends on the personal situation of the potential deportee in Switzerland. According to the principle of cases of hardship, foreigners born or raised in Switzerland can call upon their integration in Swiss society and the absence of links with their country of origin (e.g., the absence of close relatives or poor linguistic skills). Similarly, holders of permit F (provisional admission) and of permit N (asylum seekers being subjects of a pending application) who have been in Switzerland for more than 5 years (Art. 84, paragraph 5 FNA; Art. 14 AsylA) may both equally refer to this rule. The criteria to determine whether a foreigner is (well-)integrated differ between cantons (Wichmann et al. 2011), according to the principle of executive federalism (see next section). Generally, the following criteria are examined: the level of communication skills in the language of the canton of residence (French, German, Italian, or Romansh), the respect of the law, the familial and financial situation, the length of the stay,⁶ the medical status, and the chances of

⁶In some cases, a long stay in Switzerland is a reason for authorities to argue against a residence permit for foreigners who are therefore considered to have been in Switzerland for too long. The length of stay and the subsequent integration of dismissed applicants and rejected asylum seekers are rather arguments mobilized by protest actors who dispute the decision of the authorities (see Bader and Probst 2018).

Fig. 4.3 Relation of asylum, deportation and stay in Switzerland. (Author's illustration)

being reintegrated in the country of origin (Art. 31 ASEO⁷). Overall, the most important criterion is the respect of the law. Both the absence of a criminal record and debts must be proven by the so-called certificate of good conduct. In some cases, the fact that migrants' children attend Swiss schools is considered as an additional sign of good integration or, at least, an argument to extend the deportation delay until the end of compulsory education.

Second, the opportunity *to return* to Switzerland, when deportation could not be avoided, implicates a third party, namely either Swiss citizens or foreigners with a

⁷Ordinance of October 24, 2007, on Admission, Period of Stay, and Employment (ASEO); 142.201.

residence permit with whom the deportee has built affective or professional relationships. Indeed, the social capital of the deportee, that is, their relationships with members of the host country, is fundamental. Their commitment enables them to restore the initial lived situation prior to deportation. Concretely, the options are marriage and employment. In fact, immigration in Switzerland is regulated on the basis of a so-called two-circles-system (Bolzman 2002). This system implies that migrants of countries of the first circle (EU/EFTA⁸ nationals) have priority in getting a residence and work permit, which was already the case before the enactment of the principle of free movement of persons in 2002. Thus, natives of countries of the second circle (the remainder) are only admitted, apart from being granted asylum, either for family reunification (the majority) or for work (the minority). Hence, marriage with a Swiss citizen (Art. 42 FNA) or a foreigner with a residence permit (permit C⁹ or B, Art. 43–44 FNA) allows the dismissed applicant and rejected asylum seeker of the second circle to live in Switzerland according to the principle of family reunification. Likewise, support of a Swiss employer can help in obtaining a work permit if the deportee has particularly sought after professional skills (Art. 23, paragraph 3, letter c FNA). Therefore, marriage and employment may be options used as counter-strategies by protesters who defend deportees.

4.3 Competences for Administrative Decisions Regarding Reception, Deportation and Stay in Switzerland

Asylum in Switzerland is regulated by administrative law, according to a system of “multi-level governance” between the Swiss confederation and its member states, that is, the 26 cantons (Parini/Gianni 2005, 239). First, decisions on whether to dismiss/reject asylum applications or grant asylum are centralized at the federal level. Specifically, these decisions are given by the federal administration located in the capital Bern, that is, the State Secretariat for Migration (hereafter SEM; formerly the Federal Office for Migration) related to the Federal Department of Justice and Police. Their decisions are then communicated to the cantonal administrations who are in charge of implementing them according to the principle of executive federalism. A quota of asylum seekers whose application is being processed (permit N) is allocated to each canton (Art. 21 AsylO 1¹⁰). The cantons are responsible for providing shelter and activities for the asylum seekers, and compulsory education for minors (Art. 80, paragraph 4 AsylA¹¹), as well as compulsory basic health insurance (Art. 80, paragraph 3 AsylA). They are further responsible for the organization of the deportation

⁸The European Free Trade Association (EFTA) was established in 1960 by the Stockholm Convention, and includes Iceland, Liechtenstein, Norway and Switzerland.

⁹Person with a permanent residence permit.

¹⁰Asylum Ordinance No. 1 of August 11, 1999, on Procedural Matters (RS 142.311).

¹¹In Switzerland, each member of the family who requested asylum (children included) is counted as one asylum request.

decided by the SEM of the dismissed and rejected asylum applicants who refused assisted return. In cases of hardship, however, the decision-making procedure is reversed, so bottom-up. In 2007, a new regulation concerning cases of hardship entered into force (Art. 14 *AsylA*). The cantonal administrations have henceforth been allowed to suggest to the SEM the names of dismissed applicants and rejected asylum seekers fulfilling the aforementioned criteria of hardship. Consequently, those who stayed underground in Switzerland for several years despite the eviction order may submit their demand to the administration of their canton of residence. If the cantonal administration decides to forward their request to the SEM, the latter has the final say on whether the claimant is allowed to receive a provisional admission (permit F) or even the residence permit for humanitarian reasons (permit B).

In some cases though, cantonal administrations disagree with the SEM regarding either the dismissal/rejection of the asylum application or the deportation order of a specific asylum applicant. Thus, it is not unlikely that the former disobey the latter's decisions by refusing to implement them. Sometimes, this is the result of protests from civil society actors that have raised media attention. Consequently, the cantonal administration may demand that the SEM makes an exception to the rules on the grounds of hardship. In such cases, the cantonal government will first interfere and then, involve the Swiss government (federal level) represented by the head of the Department of Justice and Police to which the SEM is subordinated. Politics is thus only involved in disputes. Similarly, dismissed applicants and rejected asylum seekers can appeal against the deportation order to the Federal Administrative Court (Art. 105 *AsylA*). The court decides whether the SEM's interpretation of the law was accurate. If the Federal Administrative Court confirms the validity of the deportation decision, the claimant can make one last appeal either to the European Court of Human Rights or a United Nations organ such as the Committee against Torture. To succeed, the claimant must prove that their deportation would contravene their fundamental human rights. Specifically, they may invoke the principle of non-refoulement in the sense of Art. 3 of the European Convention on Human Rights (i.e. prohibition of torture) to dispute the Swiss authorities' assessment of the safety of either the country of origin or third country mentioned in the deportation order.

4.4 Protest Culture

Switzerland is a country of wide-spread direct democracy, instruments such as the popular initiative and the referendum offer social movements increased access to the political system (Kriesi/Wisler 1996, 22). The importance of public opinion is acknowledged by the authorities; criticism from the bottom is taken seriously at the top. As highlighted by Vatter (2008 in Hutter/Giugni 2009, 430), Switzerland is a "case of weak state and consensus democracy". First, this means that the state delegates tasks such as humanitarian aid to NGOs (Balsiger 2016, 293). Social organizations are thus regarded as partners of and important interlocutors for the authorities. Second, this means that social organizations and Swiss civil society in general have political clout. As Sciarini and Trechsel (1996, 30; original emphasis) argue: "due to the 'pressures to

collaborate' by either the referendum threat or the risk of failure in a popular vote, the power to choose whether or not a consensual strategy is partially theoretical; the elite who would openly choose to renounce the consensus is likely to be disavowed during the plebiscitary phase". Accordingly, civil society (including social organizations) is often expected to take a position during the drafting process of laws (Art. 45, paragraph 1, letter c ParIA¹²) in order to avoid further optional referenda.

Switzerland offers an "open institutional context" to social movements "due to its federal structure, proportional representation, multiparty government coalitions with rather undisciplined parties, weak public administration, and the presence of direct-democratic instruments" (Hutter/Giugni 2009, 430). However, direct democracy encourages "institutionalized protest strategies" (ibid.). Well-organized protest movements which have forged political alliances and moderate action repertoires are indeed more likely to succeed in Switzerland (ibid.; Wisler 1993). Conversely, spontaneous protest movements and radical action repertoires (such as illegal occupation) are discouraged and frowned upon, considering the availability of direct-democratic instruments (Hutter/Giugni 2009, 430; Wisler 1993) and their greater legitimacy (Balsiger 2016, 288). However, direct-democratic instruments require financial resources and considerable commitment from protesters as they need to collect a significant number of signatures within a given timeframe (Giugni 1995). As a result, the Swiss context is selective towards social movements: being open for some and closed for others (Wisler 1993, 7–8).

Protest mobilizations were more numerous in Switzerland in the 1980s than they are today (Hutter/Giugni 2009). By comparison to other European countries, Switzerland had a high level of "overall mass mobilization" (Kriesi et al. 1992, 226). Despite the primacy of direct-democratic means of participation, Kriesi et al. (ibid.) observe that the number of petitions in Switzerland was higher than in Germany and France, where moderate forms of protest are less popular. Nevertheless, Kriesi and Wisler note heterogeneous protest behaviors among the linguistic regions in Switzerland:

[D]irect-democratic institutions are more frequently used in the German-speaking regions. The difference is small for the referenda, but very strong for popular initiatives. As a consequence, the action repertory of the social movements in the Latin regions turns out to be more radical than that of their counterparts in German-speaking Switzerland. (1996, 24)

During the last decades of the twentieth century, new social movements (NSMs) arose in Switzerland. Each NSM has marked a particular era in terms of the number of protest events: the anti-nuclear movement (1970s), the peace movement and urban movements (1980s), and the global justice movement (2000s) (Balsiger 2016; Hutter/Giugni 2009). The transition from the old labor movement to NSMs is due to "the pacification of the traditional class cleavage in Switzerland and the importance of a new cleavage in the middle class" (Balsiger 2016, 289–290). The emergence of NSMs was made possible by the support of the Socialist Party, which is their main ally (Passy 1998, 43). The Party thus constitutes a bridge between NSMs and the authorities, as a spokesperson of the protest message in the political arena. Yet, because of the reality of coalition governments in Switzerland, it may occur that

¹² Federal Act on the Federal Assembly of December 13, 2002; RS 171.10.

members of left-wing parties are responsible for implementing anti-immigrant policies for instance, which puts them at odds with their political base. In fact, the political agreement between the Socialist Party and left-wing citizens is challenged when the socialists head either the cantonal governments or the SEM (federal administration). Indeed, both positions are executive and require from the political elites that they implement popular initiatives approved by the Swiss people. The consequent shift of status from opposition party to government party results in a delicate compromise for socialist elites to consent to and adopt political positions that their constituents oppose (Goto 2013). Consequently, left-wing activists hold the ambivalent position of being careful not to delegitimize their own elites while simultaneously challenging migration policies such as the Dublin agreement.

As early as the 1980s, civil society actors were organizing resistance against the side-effects of Swiss asylum policy. For instance, several churches—mostly in the Latin part of Switzerland—offered shelter to rejected asylum seekers who had been awaiting a decision regarding their asylum application for 6 years and in the meantime had integrated into Swiss society (Parini 1997a, 144). Likewise, several protest actions were conducted in different regions of Switzerland to express the overall disapproval to Swiss asylum and deportation policies. As Parini (*ibid.*, 147) states, “the peak of the resistance activities occurred in the period from 1985 to 1988, which also witnessed the creation of several resistance movements against the restrictive policy that was gradually being implemented”. Passy and Giugni (2005, 903) stress that the defense of migrants in Switzerland is often organized by protest groups “whose political goals are not directly and specifically related to migration”. This includes for instance NGOs, human rights activists and, to a lesser extent, trade unions and churches (*ibid.*). According to the two scholars however, protest activities in the field of migration face difficulties succeeding in Switzerland:

Switzerland is structured on an ethno-cultural and monistic design of the nation which makes access to the national community difficult. The imagined conception of Swiss citizenship thus poses a double-bind, both in the individual and collective access to the nation. This double-bind shapes a relationship to otherness where exclusion prevails and where it will be difficult for the actors who defend migrants and fight against racism to intervene in the political debate of this country. (*Ibid.*, 899)

Against this background, Koopmans et al. (2005, 128) note that protests carried out by migrants in Switzerland mostly mobilize claims for political change in their homelands. This result places Switzerland in a singular position, with the study by Koopmans et al. (*ibid.*) showing that migrant protests in the Netherlands, the United Kingdom, France, and (to a lesser extent) in Germany mostly address the host country. Yet, this variation might partially be explained by two factors. On the one hand, the presence of international organizations and the United Nations in Switzerland, particularly in Geneva, offers the opportunity of having an international audience through local political protests. On the other hand, direct-democratic instruments, which form the main tool for social engagement in politics, are exclusively available to Swiss citizens (Kriesi/Wisler 1996, 26).

4.5 Conclusion

This chapter began by asking whether Switzerland is a country of political asylum. Unfortunately, there are as many criteria of assessment as answers to this question. Nevertheless, I argue that, although Switzerland cherishes its humanitarian reputation abroad, it cannot be distinguished from its European neighbors on the argument of a particularly “welcoming” policy towards asylum applicants. Drawing on national statistics, I have first shown that the relatively small number of positive decisions in the asylum procedure has been stable throughout the years, despite peaks of asylum applications during foreign conflicts, such as the 90s Yugoslav Wars. Second, I have provided an overview of contemporary Swiss asylum policy and of the different laws and political decisions that have shaped it from the 1990s onwards. My review suggests that the ever-growing suspicion towards the so-called bogus refugees who would abuse the asylum system has contributed to an increasingly restrictive policy. As such, the threats of deportation by the authorities are a key element of Swiss asylum policy. Third, I have demonstrated that, although this mistrust towards asylum applicants is to be found in most European countries, the direct democracy system of Switzerland, allowing Swiss citizens to access the political system, gives the institutional opportunity to inscribe proposals driven by this feeling into the law. Accordingly, after the 2013 popular vote, desertion is no longer considered in Switzerland grounds for asylum, even though it qualifies for refugee status in the Geneva Convention. As a result, Switzerland has introduced a unique status that has no equivalent in other European countries, namely the “provisional admission for refugees” (permit F). Ultimately, direct democracy affects also the Swiss protest culture. Indeed, direct-democratic instruments such as popular initiatives have primacy over other action repertoires. Since these instruments are accessible to all Swiss citizens who follow the established procedure, other action repertoires such as demonstrations are less accepted by the authorities. However, the direct-democratic instruments require significant financial means and human resources that privilege the wealthiest political parties like the populist right-wing SVP/UDC, which promote closed-border policies. With less means but strong motivation, pro-migration and anti-deportation protests of civil society actors provide a counter-reply to the question of who ought to stay. These protests are resistant to the restrictiveness shown towards dismissed applicants and rejected asylum seekers who have been attracted and then disillusioned by the so-called Swiss humanitarian tradition.

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