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Do Resources, Justice Administration Practices And Federalism Have An Impact On Registered And Sentenced Crime Prevalence?

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Abstract:

This contribution, based on a statistical approach, undertakes to link data on resources (personnel and financial means) and the working of the administration of penal justice (prosecution, sentencing) taking into account the nationality of those prosecuted. In order to be able to distinguish prosecution and sentencing practices of judicial authorities and possible processes of discrimination, diverse sources have been used such as data from court administrations, public finances and police forces, collected by the Swiss Federal Statistical Office and the Swiss Federal administration of finances. The authors discuss discrimination in prosecution and sentencing between Swiss residents and foreigners taking into account localization and resources regarding personnel and public finances.

Keywords: federalism; crime prevalence; resources, nationality, decentralization

1. Introduction

This study is part of a larger research program which started in the 1990s and is currently managed by the BADAC, a Swiss database on the cantons' administrations and activities and an instrument for bench-learning and monitoring of federalism, attached to the University of Lausanne¹. Following studies conducted on organizational structures, political-administrative reforms and the personnel of the State, the BADAC started, in cooperation with the Institute for criminology and penal law of the University of Lausanne, a research program in the field of security and justice. A first study was designed to understand differences among cantons in the field of prosecution, sentencing and its outcome in terms of reoffending, without taking resources and organizational matters into consideration². In this new research, the first aspect of prosecution and sentencing shall be looked at together with questions of resources and aspects of administrative organization. Three aspects are now under scrutiny, namely:

- **politico-administrative:** differences in the organization and the administration of security at the three levels of the state – with a particular attention to reforms of the State and the role of cooperation among levels of the State;
- **criminological:** equality before the law enshrined in art. 8 of the Swiss Constitution and federalism in matters of penal justice – the aim is to understand differences in the frequency of prosecution, sentencing, imprisonment, including the analyses of populations groups – Swiss nationals and foreigners - which get prosecuted;
- **systemic:** analyses of links between the politico-administrative organization of justice and police, resources available, registered crime and penal responses.

Whereas the social problem of inequality before the penal law received much attention in several countries (see among others Albrecht 1995 for Germany, Mucchielli 2002, 2011 for France; see also bibliography), it remains a subject seldom studied in Switzerland, more so regarding cantons. An analysis of links of penal law, resources in personnel and finances, demographic and economic development, politico-administrative organization and crime has to be implemented, according to us, with an interdisciplinary approach.

¹ See www.badac.ch, a projet headed by Christophe Koller who just published the *Atlas of the State – Cartography of the Swiss Federalism*. Original title: *Atlas de l'Etat. Cartographie du fédéralisme suisse/Staatsatlas. Kartografie des Schweizer Föderalismus*, NZZ-Libro, Zurich 2012; other recent publications of the BADAC: *Services de migration et évolution de la population étrangère dans les cantons suisses de 2002 à 2008*, Cahiers de l'IDHEAP 258/2010, Lausanne; *Les cantons sous la loupe*, Berne, 2004. C. Koller is co-author, with Daniel Fink, of *Justice and court administrations, their workings and efficiency in Switzerland. Aspects of sentencing and its outcome in Swiss cantons*, in: International Journal for Court Administration, IJCA 2012 Special Issue 2.

² See Daniel Fink, Christophe Koller, *Justice and court administrations, their workings and efficiency in Switzerland. Aspects of sentencing and its outcome in Swiss cantons*, IJCA 2012, Special Issue 2

Sociologists, geographers or jurists are interested in their specific fields of work (Huissoud 1996, Pellaton 1980, Piguet 2005, 2009, Uebersax et al. 2002, Wannner 2004, Wicker 2003). The criminologists are, focused on statistics as they are, mostly interested in the regularities of crime, the frequency of the prosecution of persons and the judicial outcomes (Bauhofer-Queloz (éd.) 1993); the link with resources and the organizational matters is rarely seen and even less frequently analyzed (Estermann 1984, Killias et al. 2012, Kuhn et al. 2003, Storz 1996, 1997, 2007).

The researchers in administrative sciences, on their side, are interested in the organization of the public services and the reform of the State. They however rarely study the impact of reforms on populations or pay attention to the inequality before the law, whether at national or cantonal level (Bochsler et al. 2004; Giauque, Emery 2008; Koller 2008, 2012, 2013; Lienhard et al. 2005). The study on the activities of migration services of seven cantons (BE, GE, SG, TI, VD, VS, ZH) in relation with the profile of the population of foreigners (Koller 2010) constitutes a rare exception.

It is important to put the accents as follows: on geopolitical matters: the territory as a unit of analyses; on socio-demography: the differences in the structure of the population; on an organizational level: the allocation of financial resources and personnel and the degree of centralization, in order to explain disparities in matters of criminal justice. In this research, special attention has been given to the differences in matters of prosecution and sentencing among Swiss nationals and foreigners. Due to the lack of detailed data about the residence status of the latter, there cannot be a final judgment with regard to the differences found. The objective however remains to describe levels of differences and to ask if these differences may be explained in terms of discrimination policies.

If there is general acknowledgement that the Swiss federalism offers advantages in terms of respect of minorities, administrative autonomy, equilibrium of partisan forces, this system has also its weaknesses, especially on the level of cooperation, the lack of harmonization of practices, whereas the Federal Constitution is very precise: "*No person may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, (...) (art. 8, fig. 2 CSt.)*).

The statistical sources used in this study are taken principally from the Swiss Federal Statistical Office (FSO) regarding population data, data on personnel in public offices (Federal census of enterprises (FCE), registered crime (SPC) and sentencing (SUS). Financial aspects are known through the statistical work of the Federal Administration of Finances (FAF) and the data on organization and politico-administrative reforms are taken from the BADAC (ESAC08).

All analyses refer to the years 2008 (resources) or 2011 (judicial statistics). Without other explanations, the results are standardized for 1000 people of the resident population. Refugees and asylum seekers are excluded from the study. Cantons are classified in decreasing order by the size of their foreign population (residents plus nonresidents) among the total population (expressed in terms of a percentage or part).

For readers not familiar with the make-up of the Swiss State, one has to know that there are three State levels, e.g. the federal State, the cantons and the communes. The cantons have constitutions and are sovereign, except for the policy domains handed over to the federal State such as the overarching policy domains which are: foreign policy, defense matters, currency, border control, the national highway system, among others. To take just a few examples in which cantons are in control, let's mention population matters, traffic, education and universities, health, and, in our subject field, police, justice and prisons. There is hardly any federal police; federal prisons do not exist and with regard to judiciary, there is a high court to judge the legality of procedures. The federal State hasn't competence to supervise policing, the working of justice and of prisons. The only real competence in this field regards the legislative work, e.g. the drafting of the penal code which was adopted in 1937 (entering into force in 1942) and its revision, and the code of penal procedure, adopted in 2007 (entering into force in 2011) and its revision.

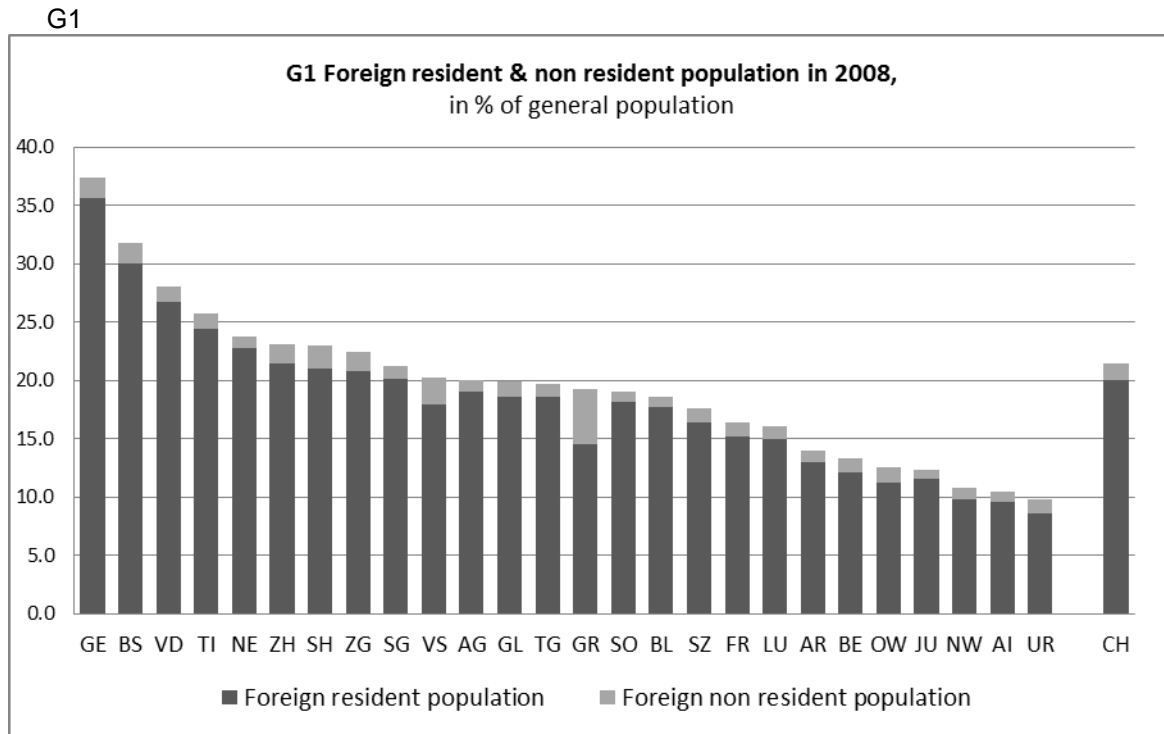
In this paper, the focus is on the extent of differences between cantons. By tradition, cantons have all an abbreviation: ZH stands for Zurich, BE for Berne, GE for Geneva, BS for Basel-Stadt, and all the others for the further 22 cantons, which we do not want to enumerate as our interest is on levels of differences among cantons – and not on single cantons. We nevertheless will give hints on possible reasons for extremes – a further study will have to be undertaken to build clusters in order to find explanations in exterior factors.

This paper is part of an exploratory phase of our overarching research subject of the economy of security in Switzerland. We formulate the thesis that the levels of prosecution and sanctioning of Swiss and foreign nationals are not only based on differences of crime levels, but the result of discriminatory policies. For the time being, this thesis cannot be statistically validated, but the results of the chosen approach provide strong arguments for such bias in the working of the judiciary.

In a first step, differences of the profile of the foreign population are presented with regard to their status; secondly, the organization of the security undergoes scrutiny, especially in respect to the personnel; finally, in the third part the link with criminological data is made.

2. Profile of the Foreign Population per Canton

In 2012, the resident foreign population reached 1.8 million persons, e.g. 23% of the general population. Geneva is leading all other cantons, with a foreign population which accounts for 39%, followed by Basel-City and Vaud (33%), whereas seven cantons counted less than 15% foreign residents (AI, AR, BE, JU, OW, NW, UR). (G1).



If one adds the foreign population which is nonresident (short term permits, foreign students, among others), varying from 1.2 to 4.9 percentage points among the cantons, the proportion of the foreign population may rise in a significant manner in several of these more peripheral or excentred cantons because of the impact of:

- tourism;
- agriculture;
- wine growing, or more
- alpine or pre-alpine with the tourist season.

Those cantons are: FR, GR, OW, UR, VS. The highest part of nonresident foreigners can be seen in the canton of Grisons ; his part of foreigners rises from 14 to 19% due to manpower employed especially in the tourism industry. The profile of the foreigners in a canton varies strongly according to the type of permit and the nationality (Koller 2010, 2013). Cantons at the external borders (BL, BS, GE, JU, BE, SG, TI) have a large body of people who cross the border every day (“frontaliers” or “Grenzgänger”), representing for border cantons from 10 to 25% of foreign employees.

Yesterday as today, the Italians are in most cantons the majority of foreigners; they are followed by the Germans, Serbs and the Turcs (especially in the German speaking cantons) and the Portuguese (more often resident in the French speaking part, also in Grisons). The big difference between the Latin speaking and the German speaking cantons is the overrepresentation of people from the EU and the students in higher education, a secondary explanation is where there is a foreign population with a more diverse origin including foreigners from former Jugolavia, countries of Eastern Europe and also from Turkey.

3. Organization of the Police and Cost of Security

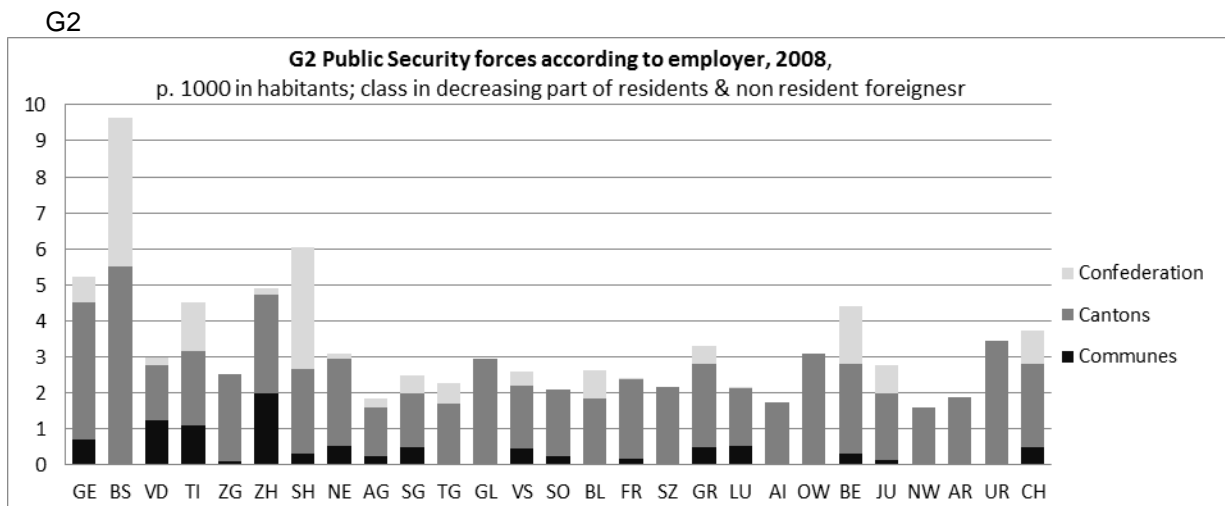
In order to overcome the absence of data on the organization and financial resource for areas of public security, the BADAC integrated a module with questions on this subject in its nationwide survey in 2010. This was with the support of cantonal chancelleries and the head of the crime statistics department of the FSO. The objective was to be able to draw a multi-level picture of available forces, of the volume of police interventions and of the organizational charts of the security forces in every canton³.

The first observation to be made relates to the strong regional disparities in the organization of the public police/security forces:

- on the one side are modernizing cantons, oriented towards practices of new public management (NPM), or small ones which have concentrated their police forces on cantonal level (AI, AR, BS, GL, OW, NE, NW, SH, SZ, ZG);
- on the other side are those units with a decentralized or mixed form of organization of their police forces (AG, FR, JU, GR, LU, SG, SO, TI, TG, VD, ZH).

The cantons of the Mittelland, of the North-Ouest and of the Central Switzerland seem to be more centralized in this field. These regions are also benefitting from the intervention of the Confederation, the central State, via the border-guards (G2) linked to customs. One may therefore point of the strong link between cantonalized forces and the forces of the federal State.

In 2008 Switzerland employed 17'818 in the area of security in full time jobs (FTJ), of which 63% were working for cantons⁴, 20% for communes and 17% for the Confederation. Seven cantons have only a cantonal police (AI, AR, GL, OW, NW, SZ, UR). Some cantons have strongly decentralized forces, e.g. Zurich and Vaud (41% of the forces). Others still, more often in the border regions, may take benefit of the important resources placed there by the Confederation (BS 42%, JU 28%, SH 55%, TI 30%). Basel-City has the highest pro rata number of local police forces (5,5 per 1000 inhabitants in 2008). The richer and larger centers such as Zurich (4,8) and Geneva (4,5) follow with police forces much above average density (2,8 per 1000).



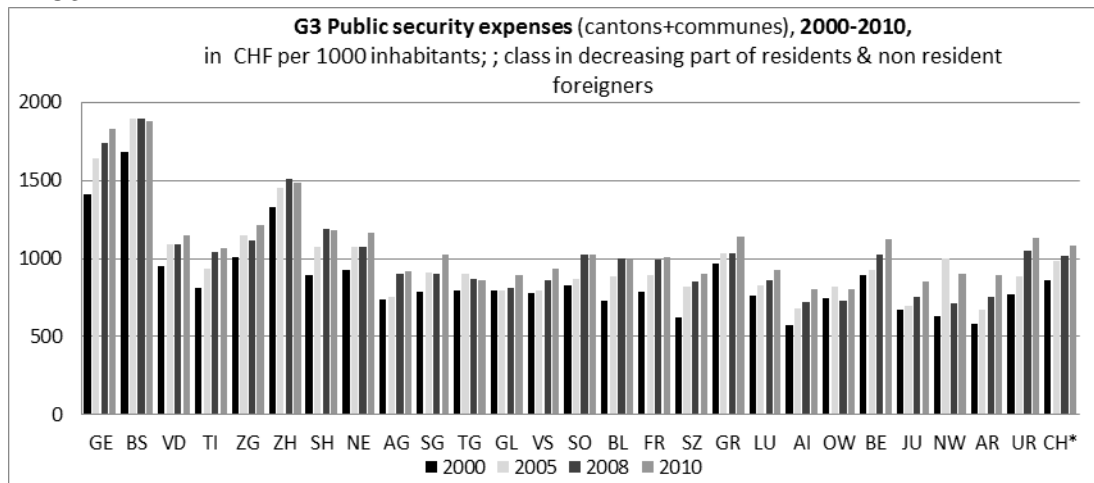
Between 2001 and 2008, the total number of employees for the maintenance of public order of the public sector (administrative personnel included) increased by 21.5% (with large differences among cantons), whereas the population grew only by 6.2%.

Our research shows that the cantonalization, geared towards professionalization as well as towards improvements in police practices and interventions, leads to an increase in the density of security forces compared to the cantons maintaining a decentralized or mixed model (with the notorious exception of Zurich).

³ The analyses of the personnel are based on the FSO (FCE; NOGA 2008: 8424 "Activities for public order and security").

⁴ Of which certified police officers, plus candidates, plus police personnel in administrative jobs.

G3



The cantonal and communal public expenses are directly correlated with the level of the police and security employed personnel. They increased significantly since 2000 in all cantons. The highest cost per inhabitant may be seen in BS, GE, and ZH, followed by SH and ZG, five cantons with high revenues, well above the average cost of 1000 CHF (G3).

4. «Crime», Status of Sojourn and Federalism

In his introduction to the volume containing the contributions to the conference on “Foreigners, crime and the penal system”, N. Queloz stated that the subject of the relations between immigration and crime constituted, in Switzerland, already a classical subject of criminology going back to the 1980s (Bauhofer, Queloz 1993). We will not go into details on this classical matter, but provide, for further orientation, the major key-figures about prosecution and sentencing.

In 2001, the FSO registered in its police crime statistics 693,000 offences committed for 466,000 affairs, 560,000 (81%) being criminal code offences (CP). Of the 77,600 offenders according to the CP, 51% were foreigners, of which 29% residents, 6% asylum seekers and the rest foreigners with nonresident status, or without information about their place of residence.

Of the 94,600 sentences (containing 101,000 violations) handed down in 2011, 56% concerned foreigners, without any information about the status of sojourn. More than 50% concerned traffic offences, one third criminal code offences, 15% offenses against the law on foreigners, and 5% drug offences. Of all sanctions imposed, 73% were monetary penalties with suspension, 13% monetary penalties without suspension and 9% prison sanctions without suspension, the suspended prison sanctions having lost any importance (1%), and the rest community work orders.

4. 1. The Prosecuted Offences and Foreigners

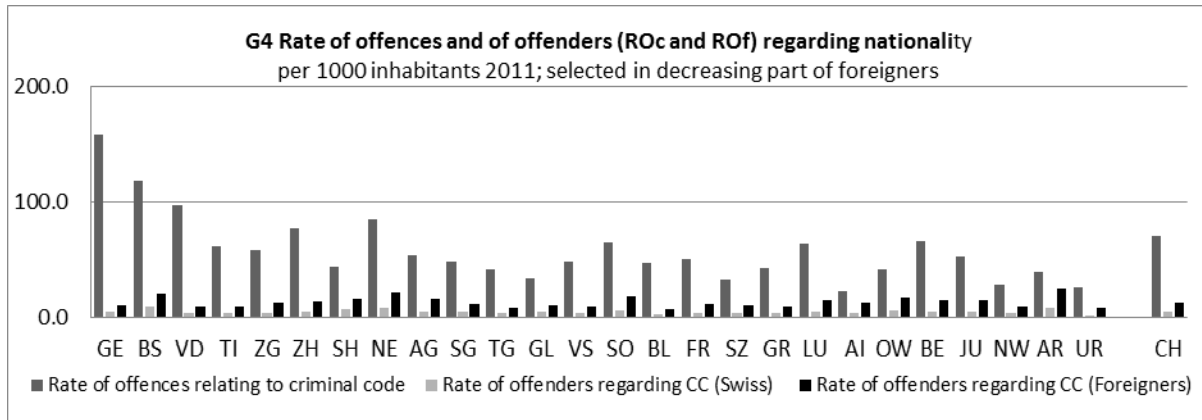
4.1.1. Criminal Code (CP): Offences and Offenders

The offences related to the criminal code are considered both, an indicator for the apparent level of crimes committed in a country and an indicator for the work undertaken by the police, especially with regard to the clearance rate for the more serious offences.

Of the close to 78,000 offenders regarding the criminal code registered by the police in 2011, some 56% had no Swiss nationality. However, more detailed information on status of residence of the offenders is required, in order to calculate rates of prevalence regarding the population with a status of residence (in-country made crime) and offenders who come from abroad and commit an offense in the country, be they tourists, businessmen, on transit or burglars. Despite of the absence of data, we undertook the exploration of differences in the prosecution of Swiss and foreign offenders, the focus in this study being the differences between cantons.

Initially the focus is on the convictions for criminal code offences in relation to the overall number of convictions, and then on the rate of offences with the number of offenders regarding criminal offences for 1000 inhabitants (G4, G5). In a further stage, we will look at the principal violations of penal laws by offenders of foreign origin.

G4

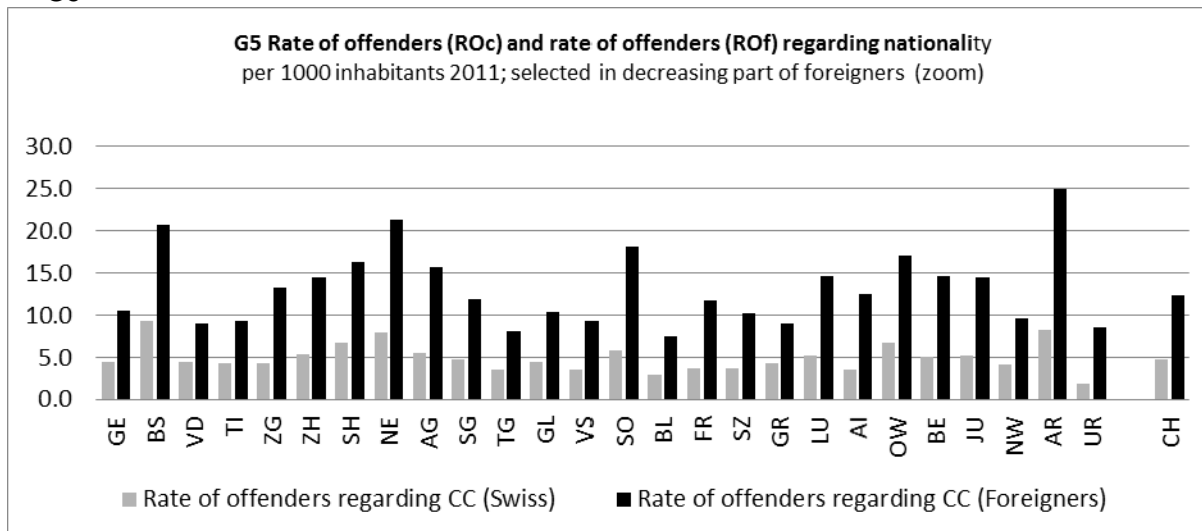


Source: FSO-SPC, ESPOP; own calculations.

The highest number of convictions for offences relating to the criminal code can be observed in GE (47,8%), NE (43,3%) and AR (40,6%). Five cantons are below average (BL, GR, NW, TG and UR, with the lowest in UR (10,3%). The Latin cantons have higher numbers (33,9% for francophone cantons and 33,5% for the Italian speaking canton) than German speaking cantons (27,1%). The rate of offences according to the criminal code lies at 71 for 1000 resident persons. Cantons of BS, GE., NE, VD increase the average (GE: 160, resp. for the city 217; BS, 199; VD 95, but the city has a rate of 190) (G4). At the opposite end, ten cantons – especially those of central Switzerland and of Appenzell (AI, AR, GL, OW, NW, SZ, UR) are characterized by rates well below average, at 40 for 1000 inhabitants. More interestingly is the relationship between the rate of registered offences and the rate of offenders. Despite large inter-cantonal disparities of offences, the ratio of offenders does not change. In fact, with the exception of one canton (AR), the rate of offenders is lower than 20 for 1000 inhabitants for the offenders of foreign origin and below of 10 for Swiss offenders (G5).

With the notable exception of Basel (BS), it's not among the cantons with a strong foreign population that one finds the highest rates of foreign offenders. An absolute maximum can be seen for AR the rate of which is four times higher than the neighboring canton of TG and three times higher than in the other neighboring canton of SG. If one takes into consideration religion and culture, it appears that cantons with a majority of French speaking and protestant inhabitants have higher rates than all other cantons. However, cantons with higher rates of prosecution of foreigners have also higher rates of prosecution for Swiss people. There is a significant correlation between police registration and prosecution of offenders regarding criminal code offences (Corr. Pearson: 0.651**; 0.01).

G5

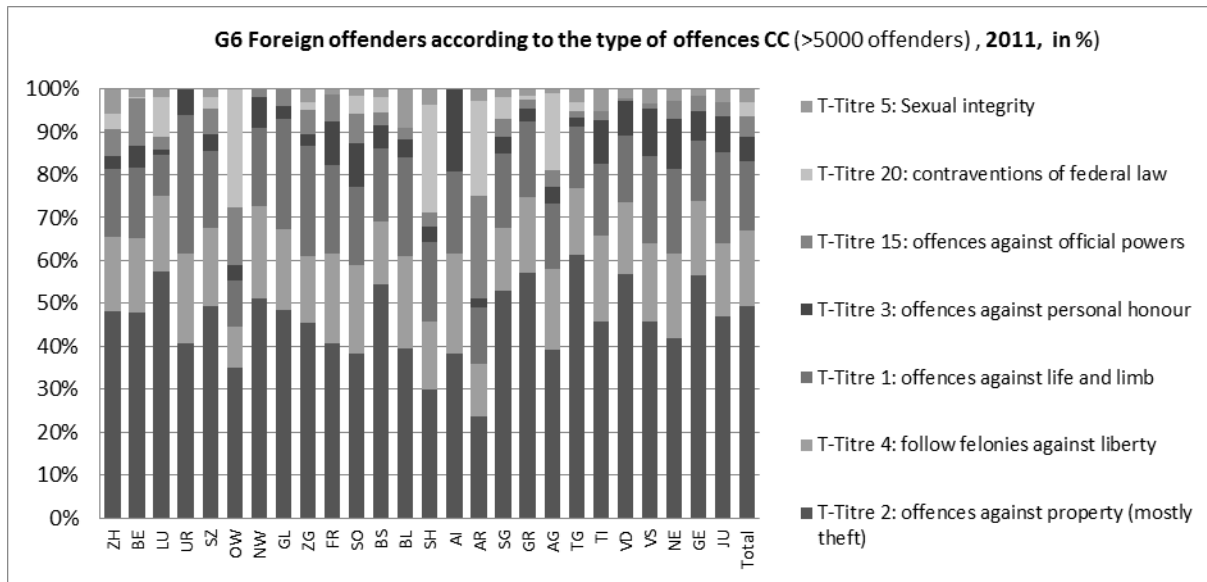


Source: FSO-SPC, ESPOP; own calculations.

Seven types of offences show frequencies of 5000 offenders and more in 2011. With 39,000 cases, offences against property (among which are theft) committed by foreigners are at the top of all types (50%, see G6 – Total; 40% for Swiss people). In decreasing importance for foreigners are felonies against liberty (17%), offences against life and limb (15%), offences against personal honor (4%), offences against official powers (3%), contraventions of federal law (3%) and

offences against sexual integrity (2%). Except for theft, more frequent among foreigners, the structure of delinquency according to the criminal code of the latter is very similar to the one of the Swiss.

G6



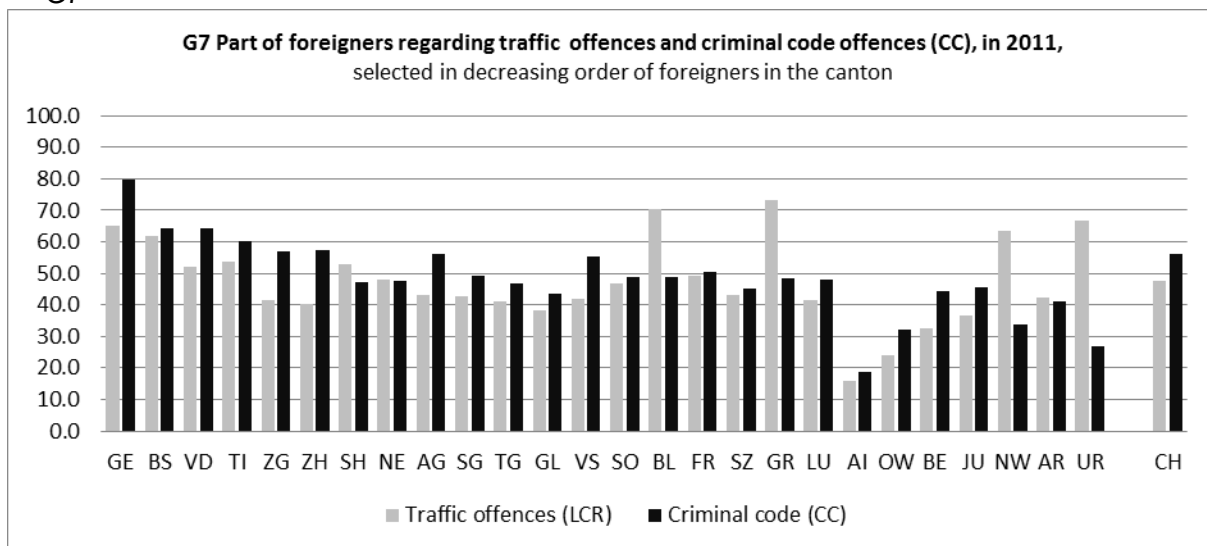
Source: FSO-SPC; own calculations.

In 2011, the variation per cantons of the foreign offenders is important, with an overrepresentation of theft for BS, GE, GR, LU, TG, as well as for offences against public powers. Except for the small canton of AI, the part of offences against the honor is very high in NE, SO and VS, whereas BL is characterized to have a part of offences against sexual integrity over average.

4.1.2. Traffic offences (LCR): convictions

Due to the fact that Switzerland does not have a centralized registration of traffic offences, we will consider convictions for the purpose of this study in place of this major area of offences (>50%) in Switzerland. We find again extreme differences among the cantons with regard to the convictions for traffic offences as for criminal code offences, especially with regard to the status of residence of foreigners. There were 51,500 traffic offences registered in the penal registry of which 47% were for foreigners. Graph 7 shows the part of foreigners sentenced for this type of delinquency, compared to those for criminal code offences, figures presented in decreasing order of the part of the foreign resident population. The highest parts have GR (with 73%), followed by BL (71%), UR, GE, NW and BS (>60%), being as well the result of important highways as of policing priorities in these cantons (G8).

G7



Source: FSO-SPS-ESPOP; own calculations.

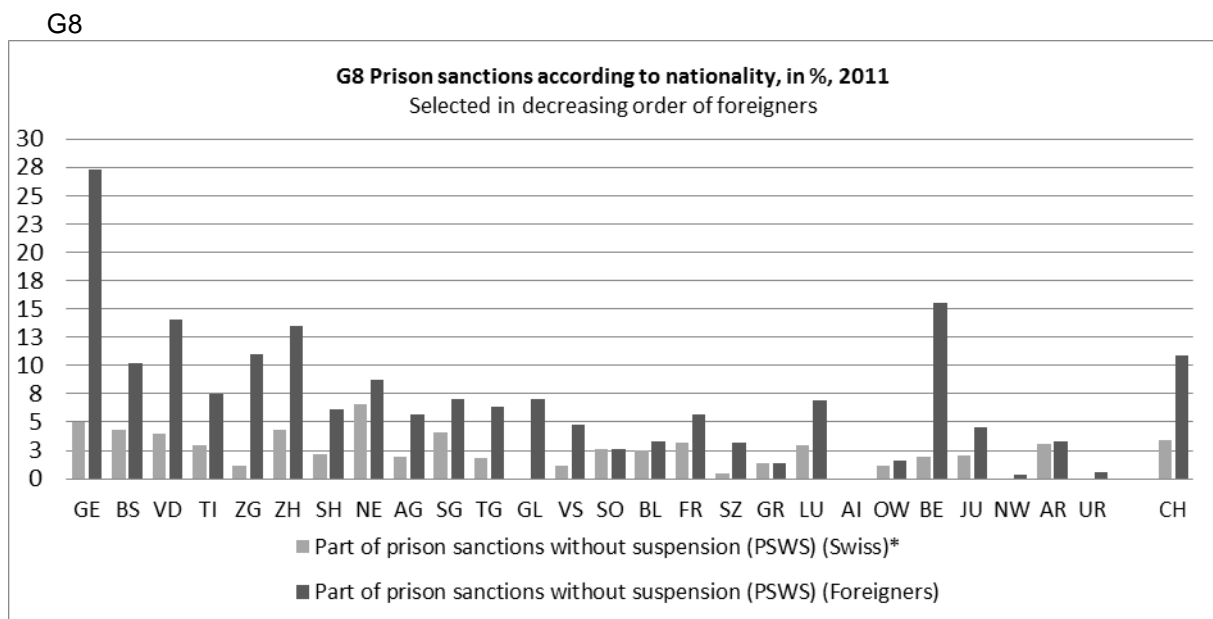
Culture could play a role in the explanation for the high rate of convictions for traffic offences in the French speaking cantons - 8 per 1000 inhabitants compared with 7 for German speaking cantons, whereas the Italian speaking area has a rate of 6. The rate of the French speaking area is also higher as cantons with most Catholics (7,7) or mixed (7,4); the cantons with a majority of protestants are quite lower (6.6).

The dimension of the cantonal territory, the size of the population, the length of highways and the intensity of the traffic seem equally to play a role, the highways presenting an important potential in terms of automatic controls of speeding, with interesting financial resources to be gained for the coffers of the State. Convictions are particularly frequent in the cantons AG, BE, GR, VD, ZH. The border cantons, such as BS, BL, GE, TI as well as UR, placed on the main axes of transit, have particularly high rates of convictions of foreigners for traffic offences, most probably foreigners without residence in Switzerland.

4.2 Sentencing: Use of the Prison Sanction

Before the revised criminal code came into force on 1st January 2007, 94% of all convictions contained as a noncustodial penalty, be it a fine, a suspended prison sanction or a prison sanction converted into a community work order. Or, as for the indicators discussed above, there are important disparities among the cantons when one focuses on the prison sanctions imposed by judges, much to the disadvantage of foreigners.

The part of prison sanctions with (PSWS) and without suspension (PSWO) with relation to all sanctions imposed is particularly high in the canton of Geneva, especially for foreigners (27%). This part can only be explained with the important use of pre-trial detention in that canton, consequence of an exclusively repressive policy conducted by the Prosecutor's office for over one decade. The opposite can be observed in BE and VD, where one finds high parts of prison sanctions for foreigners, compared to those imposed for Swiss citizens. The canton of NE occupies a single position because it shows a high rate of prison sanctions for Swiss as well for foreign nationals. The average length of sanction imposed shows equally high disparities not only with regard for nationality - it is always higher for foreign nationals -, but also among cantons.



Source: FSO-SUS own calculations

5. Conclusions

The present analyses of the profile of the foreign population, of resources of security forces and of policing and judicial practices show strong disparities among cantons, with cleavages along language, cultural and geographical boundaries. It is not easy to find causal explanations about the level of crime in the cantons and about the implication of foreigners along their status of sojourn. All indicators used – or at disposal – show however a prevalence of prosecution and sentencing two to five times higher than that for Swiss people, with extreme disparities among cantons. If the prevalence of offenders prosecuted and convictions handed down are systematically higher for foreigners, whatever the type of offence, the overrepresentation of young men among this group may push the figures upwards, but it does not explain the importance of inequalities among cantons. If one considers the use of pre-trial detention, it is evident that foreigners, due to their

status, meet more often the criteria required for the use of pre-trial detention, especially the fact that they could be tempted to quit the country in order not to undergo a criminal procedure. However, the discrepancies in the use of this judicial instrument are horrendous among cantons. The same holds true for the sanctions imposed, especially the use of the unsuspended prison sanctions, much more often used for foreigners than for Swiss citizens.

For the territorial discrepancies, the systematic analyses of all available indicators show an overrepresentation of GE, ZH, BS, but also of NE, ZG, and SH, for police registered offences as well as for convictions. Culturally speaking, delinquency seems in the French speaking parts to be higher than in the German speaking part, especially in the larger and richer cities; and it's again GE which pushes the figures above average.

Partial disparities of delinquency are explained by geo-topographical factors, determined by borders, especially for offences against the law for foreigners, and transit axes with regard to traffic offences. However the geography of offences regarding the penal code is conditioned by politico-administrative decisions, expressed in terms of financial resources and personnel. We have seen that the density of police forces is correlated with finance, those being again correlated with the number of offences/convictions, the increase in costs and resources in personnel leading to more prosecutions, more sentencing, and in some cantons, to more incarcerations.

The profile of the foreign population constitutes a further explanatory factor for disparities among cantons; to take just one example, the foreign population in the French part seems better integrated, speaking most of the time the local language, and being less heterogeneous than in the Swiss German part. However, in the field of crime policy, a part of the foreign population in the French part of the country is confronted with more repressive responses from penal authorities, closer in that policy area to the repressive French model.

The comparison of different indicators requires postulating the existence of selection and filter processes typical to the institutional treatment of delinquency and the criminal policy of the State. These are determined in part by the allocation of resources and financial means. In several small cantons, more rural and at the periphery, the low level of crime is most probably due to a more intense integration and a higher degree of social control, whereas cities offer numerous opportunities for all types of populations, whereby social control and institutional control may be much weaker.

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