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Inside the State, against the State

The Critical Use of Legal Means by NGO Advocates inside French Immigration Detention Centres

Innerhalb des Staates gegen den Staat. Der kritische Einsatz rechtlicher Mittel durch NGO Aktivist*innen innerhalb französischer Abschiebungshafteinrichtungen

Drawing on document analysis and ethnographic fieldwork, this paper analyzes the tensions and paradoxes experienced by lawyers from an independent Human Rights organisation who daily work inside a French immigration detention centre, and provide legal relief to deportable immigrants awaiting their forced removal. On the one hand, these lawyers are activists who see their own job as one of critical advocacy which leads them to legally challenge deportation orders before court. But this mission, on the other hand, is an official one, and compels them to join the regular team of the centre and accept its rules. This strictly legalist perspective is both a strength and a limit to their everyday action, and modifies their capacity to change the fate of detained immigrants.

Keywords: Immigration, detention, border, internment, cause lawyering, advocacy

Auf der Grundlage einer Dokumentenanalyse sowie ethnographischer Feldforschung analysiert dieser Beitrag Spannungen und Paradoxien, die von Jurist*innen einer unabhängigen Menschenrechtsorganisation erfahren werden, die täglich innerhalb einer französischen Abschiebungshafteinrichtung arbeiten und rechtliche Hilfe für Abzuschiebende anbieten, die ihre zwangsweise Rückführung erwarten. Auf der einen Seite sind diese Jurist*innen Aktivist*innen, die ihre eigene Tätigkeit als kritische Interessenvertretung wahrnehmen, was sie dazu veranlasst, Abschiebungsanordnungen vor Gericht rechtlich anzufechten. Auf der anderen Seite ist diese Mission aber eine solche offizieller Art, und diese zwingt sie, sich dem Stammpersonal der Anstalt anzuschließen und dessen Regeln zu akzeptieren. Diese strikt legalistische Perspektive stellt sowohl eine Stärke als auch Grenze ihrer täglichen Arbeit dar und verändert ihre Möglichkeiten, das Schicksal der eingesperrten Migrant*innen zu verändern.

Schlüsselwörter: Migration, Abschiebungshaft, Grenze, Einsperrung, anwaltliche Vertretung, strategische Prozessführung

Introduction

Most European countries have experienced a similar tension in the past years: they enforced an ever-growing repression of unwanted immigration, leading to intensive use of measures of forced removal and confinement. Most of these same countries have however combined this repressive trend

with a set of protective legal provisions and procedures designed in reference to Human Rights and the principles of "Due process of law", and that act as potential limits to free repression and deportation of immigrants.

Drawing on this tension, this article will assess its practical consequences in the case of France, inside specific institutions known as immigration detention centres – in French, *centres de rétention administrative* (CRA). Although they are administrative institutions, the goal of these centres has definite repressive features: they are run by the police and designed to lock up immigrants facing a deportation order – most of them because they are undocumented – for the time necessary to organize their *effective removal* for a maximum time of 90 days. 25 of them are currently in use in France. These centres are police facilities, distinct from prisons and therefore foreign to penitentiary rules and to any protective status that penal detainees may enjoy: they are more directly related to the old exceptional institution of *internement administratif* which lead to the exceptional preventive detention of various "deviant" populations in France throughout the XIXth and XXth centuries.

The reinstatement of such a police-driven detention was however possible only through its insertion in the contemporary legal framework: detention centres had to be made compliant with the general principles of the "rule of law" and immigrants had to be statutorily protected, even as confined deportees. A series of legal provisions thus guarantee the protection of certain categories of immigrants (e.g., the parents or spouses of French citizens, or persons who have lived in France for a certain time), and remedies are designed to allow them to assert these rights before court. What is more, the "effectivity" of these rights – the actual access of detained immigrants to justice – became an issue as well as early as in the 1990s, leading to the presence inside centres of lawyers from French NGOs. These independent actors are legally mandated by state authorities to "ensure the effectivity of detained persons' rights", and fulfill that mission by meeting the detainees, providing them with legal counsel, and finally by regularly challenging their deportation or detention orders before court. All centres now include such a team of independent lawyers, belonging nowadays to five different Human Rights organisations, but originally from one organisation alone, known by its acronym *Cimade*[1].

This activist presence then incarnates the general tension between repression and legal protection of immigrants at the very heart of immigration detention. In what follows, I will draw on an empirical study I carried out on *Cimade* – again, the oldest organisation present in detention – to describe how such a paradoxical activity unfolds in immigration detention. I will above all focus

1 More information on this organisation will be given *infra*. As the acronym (which stands for *Comité inter-mouvements pour l'aide aux déplacés et evacués*) has now become a proper, feminine name ("*La Cimade*"), I will spell it this way in this paper.

on the impact of this logic on organisations themselves: entering detention centres first means for these organisations to officially enter a police institution, and therefore to accept its rules: this means that their critical activity will have to remain a purely legal one, excluding all forms of extra-legal subversion. How does this impact the activist logic which members of these organisations however want to preserve inside detention centres? If this means their advocacy will only consist in strategic litigation against measures of deportation, how is this actively organized and what are its strength and limits – in other words, what does it mean to be both outside the state, but inside a state-run institution?

The answer to these questions first interests me as a legal sociologist: describing the activity of *Cimade* lawyers in detention challenges descriptions of immigration detention centres as "exceptional" devices where all forms of legal framework or legal protection are suspended (Agamben 1998). Indeed, "the law" is ever-present in this study, but its main incarnation is not straightforward protection or repression of immigrants – it is above all the multiplication of occasions for litigation, as described by other authors (de Genova 2002; Coutin 2000; 2002). In this perspective, this study contributes to other works that have traditionally described the use of law as a strategic tool for political action (Sarat/Scheingold 1998), especially when it comes to the legal defense of deportable immigrants (Coutin 2000; de Genova 2002). In this case, legal provisions are a way to challenge state authorities with their own weapon – the law – but they are both a habilitating and a restraining resource: they are indeed often described as having a "de-politicizing" effect on activist cause lawyers who engage in strategic litigation: personal cases with a political or human dimension are reduced to purely technical legal issues followed by unpassionate lawyers, while legally irrelevant cases may not receive any help at all[2]. While *Cimade* lawyers obviously face these problems, we will see their organisation inside detention centres may not be described as a purely "technical" one.

The second interest of this study is to also show the impact of this legal activity on the enforcement of deportations and on the type of control that is indeed enforced through immigration detention: if activist lawyers do challenge deportation orders before court, what are the consequences on the selection of immigrants for effective removal, release from the detention centre or even legalisation? In other words, how does this activity influence the social production of state borders throughout the deportation process (Bosworth 2014; de Genova/Peutz 2010)?

I will draw on a sociological survey initially conducted for my Phd dissertation that was updated and published (Fischer 2017), combining work on archives, and a five-month ethnographic fieldwork inside a detention centre

2 Cause lawyering is understood here as the mobilisation of law and of legal strategies to serve a political cause (for a systematic analysis, see Sarat/Scheingold 1998).

located in the airport of a major French city (see *infra*). I will first give a brief outlook of the history of immigration detention and of the tension between increased repression and lasting protection of immigrants. I will then turn to my ethnographic fieldwork to present the general economy of strategic litigation for *Cimade* lawyers inside, and finally the impact of their work on the enforcement of deportations.

Researching Immigration Detention

The first part of the research focused on the history of detention centres since the mid-1970s, and the importance of their independent critique on their institutionalisation. Public and private archives were used to retrace that history, as well as the specific history of *Le Sernans*, the centre described in this paper. Further fieldwork included an ethnography of the everyday work of the *Cimade* team inside the centre, enabling me to follow their encounters with immigrants in the organisation's offices inside the centre, and to make informal interviews with members of the team.

As in many studies of detention places, I was immediately assigned to a "side" – that of the *Cimade* advocates and the immigrants they defended – and thus had fewer contacts with the police staff of the centre. This position still enabled me to interact daily with the non-police staff of the centre – social workers and nurses who worked in the same building as *Cimade* lawyers. I could be part of the everyday life inside this facility (briefings and meals that all took place in the common rooms of the building), and witness the common identity its members shared, mainly out of their common opposition to police forces. Another point these actors had in common was their expertise of immigration issues – a dimension made obvious by my own mistakes whenever a technical issue was discussed. The length of the observation thus provided the necessary time for my own inclusion to the team.

Ban forced removals or control their enforcement? Deportation, Immigration Detention and the "Rule of Law" in France since the 1970s

As previously stated, the genealogy of immigration detention centres brings us back to so-called "administrative internment", both as an official institution and as an unformal police practice. In wartime indeed, *internement administratif* was used in France to lock up all "nationally suspect" persons, namely foreign citizens coming from enemy countries. In peace times however, this institution was long used to the preventive police control of populations that could not be charged penally, but whose very presence in public places was considered as a social threat: vagrants, prostitutes, and later immigrants and colonial subjects had then to be removed from modern urban

public landscapes, and forcibly brought to remote police stations, shelters or hospitals. Although these legal possibilities were removed from legal codes after the second world war, the police practice of preventively controlling these "floating populations" remained for a long time as an informal police repertoire – and survives nowadays in police logics of ethnically targeted "stop and frisk" action (Jobard 2010).

The practice of locking up deportable immigrants awaiting deportation was then part of this informal policing until the end of the 1990s. This same decade however saw a broader change occur in the general economy of power relations between the various actors of immigration management. As official labour immigration was ended in France in 1974 and deportations of unauthorized immigrants were reinstated, this shift to increased repression happened in a renewed political and legal environment. After the overall 1968 contention movements, a decade of intense activism developed, with a particular focus on vulnerable minorities – among which immigrants – and a general framing of demands in terms of "rights" and respect for the "rule of law" (Joppke 1998).

This led to the emergence of a genuine immigration law, to the creation of legal provisions protecting certain categories of foreigners from being deported (or granting them the right to a residence permit), and finally, to the increasing intervention of courts and legal practitioners in the daily relations between the state and both legal and illegal immigrants. These two dynamics are actually closely interrelated: Human Rights Organisations commonly used cause lawyering as their main form of action, thus contributing to the constant creation of immigration case-law and to the growing involvement of the judicial power in immigration issues (Joppke 1998). State officials now had to count with either new actors, or actors influencing the everyday enforcement of immigration policing with renewed and notably legal means of action, in a policy environment becoming itself more and more legally organized – a dynamics the recent history of immigration detention very accurately accounts for.

The institutionalisation of Immigration detention in France

This evolution directly influenced the progressive institutionalisation of immigration detention – a process initiated in the mid-1970s, and still pending in many ways. After having remained informal and unchecked for a long time, the practice of confining immigrants in makeshift facilities finally became a public concern in the 1970s and got legalized in the early 1980s. But as they went public and official, the centres could not go on with the unchecked police control of the former years. Their subsequent evolution achieved their actual integration to the political and legal framework of the rule of law: each successive reform confirmed them as repressive confinement institutions designed to enforce deportations, *and* added to their enforcement various procedures or actors explicitly designed to guarantee the *effectivity of legal protection*

(*effectivité des droits*) for the immigrants inside. Up to the present day, what was now officially designated as *rétention administrative* was then involved in a triple dynamic: first, the centres were slowly institutionalized, as the legal framework defining their everyday enforcement grew more precise – until a nationwide model for their internal rules officially defined the *rights of the detainees* (*droits des retenus*) in 2001. Second, they became perennial institutions, slowly moving out of the former informality of emergency camps. Third, they were more and more specialized, involving professional actors for the control of the confined migrants, but for their relief, care and legal aid as well. This last evolution confirms that the principles of the rule of law and the existence of legal provisions protecting the immigrants are not an actual obstacle to the creation and enforcement of immigration detention devices. On the contrary – they do represent a new inflexion in the way these devices help to manage illegal immigration. In this case, the obligation to look after the migrants and to protect them while actually deporting them was integrated to the very organisation of *rétention* (Fischer 2017).

As a result, centres nowadays include the intervention of a medical staff and of social workers from a state agency. But they above all include the presence of independent lawyers from local human rights organisations. The origins of the intervention of these non-governmental actors inside *centres de rétention* is again highly representative of the transformations of immigration policing since the 1970s. The first organisation ever to enter the centres, *Cimade*, is a protestant organisation initially formed in 1939 at the outbreak of WWII, to help out French populations evacuated from the combat zones of eastern France. It was then mainly created to intervene inside refugee camps – a peculiarity that went on for the following years to become part of the organisation's activist identity, rooted in the idea of critical cooperation with state authorities. In the beginning of the 1980s, its members first accepted the end of legal immigration and the legitimacy of border control, before choosing to participate in the organisation of *centres de rétention* as long as they were made legal and controlled. Getting in touch with the French ministry of social affairs as early as 1983, *Cimade* members then took part in the very conception of the centres and their management. By doing so, they progressively built a policy network with various government officials around the everyday running of immigrant detention and deportation, which contributed to the improvement of the legal status of *rétention* by maintaining a public concern over their existence (Marin/Mayntz 1991). Although this participation was reduced in the early 2010s, it still involves a permanent presence inside the centres to both check over the conditions of confinement and provide the detainees with individual legal counsel. The dynamics of institutionalisation simultaneously affected *Cimade* itself as an organisation: as *rétention* became legalized, its members went professional, as specialized cause lawyers tended to replace the former left-wing Christian activists among the organisation staff.

This presence of permanent, non-governmental legal experts inside immigration detention devices indicates a major shift in the articulation between

government and expertise: as Foucault used to state, the "good government" of the detainees supposes to create "a coherent system of power […] by integrating to this system a plurality of powers, different from one another and possibly opposed to one another or even opposed to the main, central power" (Foucault 2004: 55, my translation). In this case, the progressive emergence of a legal framework for the practice of deportations was both a result of and a strong incentive for the intervention of new, specialized actors in the everyday enforcement of immigration control. This empirical evolution changes the way social sciences may address *centres de rétention* as a research object: the problem here is not so much to describe them as opaque, exceptional facilities, than to analyse the ordinary work of a group of actors whose daily job is to run an office inside the centre and use the law to spot, label and repel potentially "exceptional" or "arbitrary" practices. *Cimade* lawyers indeed commonly examine the legality of deportation and detention practices, to point some of them as "unlawful" in reference to precise legal provisions, and possibly to file a motion against them before a judge. The ethnographical inquiry I led in a centre in 2005 precisely aimed to describe the impact of this new organisation on the deportation process.

Legally managing the border: the collective government of immigration in a French centre de rétention

The fieldwork this section will draw upon was conducted during the spring and summer of 2005 in a *centre de rétention* – designated here as "*Le Sernans*", a fictitious name – which location, size and history are of a particular interest. Built next to the main runways of the international airport of a major city, this centre is one of the hugest in France, receiving up to 140 detainees at a time, with an occupation rate of more than 80 % each year. These characteristics make this *centre de rétention* a strategic facility in the enforcement of deportations nationwide and gives even more importance to the local contribution of *Cimade* lawyers – along with other states or non-state actors – to the everyday management of illegal immigration and deportation.

Making sense of this contribution first requires a description of the general organisation of the centre and of its effect on the confined population: *Le Sernans* is, indeed, designed to socially re-produce the legal and geographical border between deportable and non-deportable immigrants. In this context, the strategic use of immigration law by Human Rights lawyers from *Cimade* will then be described as a way to affect, shift, and eventually re-produce this border.

The *centre de rétention* as a "bordering institution"

While unauthorized immigrants live a life of informality when they are "outside", immigration detention reverses this dynamic: the presence and activity of arrested undocumented migrants is made durably visible, while the

state regains definite power over the management of their existences. At *Le Sernans*, these direct social effects of immigration detention were actually inscribed in the very organisation and zoning of the centre. As many facilities built especially for *rétention*, *Le Sernans* was divided in two great areas. Passing the main entrance gate, each newly detained immigrant first entered the "police zone", a small area consisting of housing facilities for the mobile police units assuring the guard of the centre, and of a single storey administration building where deportation files were being processed by other police officers.

Going through this building, deported immigrants were slowly being turned into detainees, in a both legal and physical series of operations. On the legal side, they entered the centre along with their deportation file. As its legal contents were being processed by police officers, they then lost their former condition of "non-existence", while the state reaffirmed on the contrary its own monopoly over the allocation of legal status, and the ability to travel (Torpey 2000). This legal takeover was materialized here by the precise identification of detained foreigners, and by their inscription inside police computers, enabling officers to follow their cases and take into account each new development of the deportation process – a judicial decision, the issuance of a consular pass replacing a missing passport, or the reservation of plane tickets.

When deported immigrants were finally transferred to the next zone – known as the "detainee zone", where the everyday life of the confined foreigners was managed for the time of their *rétention* – state officials had then taken control of the major aspects of their current existence, and of all capacity for them to design their own future. The organisation of the detainee zone itself was designed to complete these legal operations. Within its limits, confined immigrants were to remain permanently visible and available for police action: each legal evolution in the deportation process had to be immediately translated into a physical grip of state officials over the concrete existence and body of the migrant – resulting in his convocation to the police desk, his taking to the courthouse or to the airport to board on a flight.

This is why the legal control of the detainee went along with the enforcement of a physical control over him. When entering the centre, each detainee was neutralized as a body: deprived of most personal belongings, searched for any object that may be used as a weapon, and medically checked in order to detect heavy and contagious pathologies. The detainee zone itself was organised to create a relatively liberal confinement regime – supposedly more "liberal" than penal detention – while permanently keeping the immigrants under control. Located in a huge outdoor square closed by a double fence of barbed wire, this zone was dedicated to the management of the detainees' everyday life. Its everyday activity revolved around the six single-storey buildings were the bedrooms of the detainees were located, as well as the separate buildings of the mess room, recreation room, and finally, the open-access "administration building" where the different forms

of relief were concentrated: a dozen of employees from a private company managing the logistical aspect of housing, a team of four permanent nurses from the closest hospital, five social workers, and finally the five lawyers from *Cimade*, present too at a time everyday. In daytime, detainees could walk freely in and out of these different buildings and wait for their turn to be received. This seemingly open organisation was nonetheless combined with various "remote control" devices that ensured the visibility of detained populations. If no policeman was actually present inside the detainee zone itself, all common areas are permanently checked through a network of cameras, while the external limit of the zone was constantly screened from surrounding watchtowers. In the same way, every move of a detainee inside the zone could be supervised through the use of "detainee cards" given to each immigrant entering *Le Sernans*, and indispensable to get a meal or wash one's clothes.

While being materially free to move inside the centre, detainees were therefore kept under the constant gaze and control of the police, for the deportation to be enforced anytime. The "bordering" logic of the *centres de rétention* was inscribed in its very architecture and general organisation. Unlike prisons, its main goal was not to punish immigrants, but to reaffirm state monopoly over the definition and the actual performing of international movements (Walters 2002). As a result, deportable foreigners placed in a *centre de rétention* could no longer design their own immigration strategy. Their future moves were now decided in police and consular offices that were materially out of reach.

As we have seen, this "border effect" relied on the visibility – both legal and material – of the immigrants, which constantly reaffirmed their non-citizenship. But the *centre de rétention* also included other expert visions of the detainees – namely, other ways to analyse and qualify his or her situation, and to deal with it. The detainees' deportability could thus be evaluated medically by the nurses of the centre or cared for by its social workers. The last part of this presentation will nonetheless focus on the legal aid provided by the *Cimade* lawyers, for the particular form of expertise it represents: in this case, the official goal of the aid was not to relieve the detainees locally – or possibly to ease their deportation – but to check the legality of the deportation order itself, and to challenge it legally if necessary. As the only independent and critical experts in *centres de rétention*, *Cimade* lawyers were then the only ones precisely entitled to challenge the state monopoly over the definition of the border and of non-citizenship – in short, of who should be deported or have the right to stay[3].

3 Immigrants inside detention centres are of course allowed to contact their own personal attorney, or the attorney of their choice – but due to the remoteness of the most centres from main cities, these lawyers rarely visit their clients.

Cimade lawyers in immigration detention

The 5 lawyers from *Cimade* had been part of the immigration detention staff since the opening of the centre of *Le Sernans* in 1988. When my own observations were conducted in 2005, their intervention had been long integrated in the everyday routine of the centre. All members of the *Cimade* were considered as colleagues by all the non-police actors of the administrative building in the detainees' zone, sharing with them a professional familiarity I was slowly socialized to myself. All members of the *Cimade* team nonetheless had a professional identity of their own, whose key dimension was the capacity to master and use immigration law. Three of them owned a master's degree in law, and one a degree in political science. The last member of the team happened to be the only man among a team of four women but was also older (around 40 while all women lawyers were in their 30s) and had been part of *Cimade* for a longer time. This last characteristic mainly explained his practical, non-academic knowledge of immigration law – which he learnt through teaching sessions internal to the organisation, and through the practice of legal aid in *rétention*. Along with this special expertise in law came a high level of politicisation among all the team members: the job of legal aid was mainly seen as a way to challenge state decisions, each legal action taken against an allegedly abusive deportation order being commonly presented as a "fight" against state officials, either bringing to a "defeat" or a "victory".

In such a context, *Cimade* lawyers were constantly confronted with a tension between this political commitment to activist litigation, and the "legalist" attitude that what imposed by both their will to use legal means, and by the material conditions of their intervention. Inside the team, this particular ethics led to a rejection, or at least the expression of discomfort, towards other, more overtly subversive forms of resistance. This was the case for hunger strikes for example, a repertoire regularly used by the detainees, but considered as both dangerous and inefficient, as it never led to the actual granting of a *right* to stay. Litigation, on the contrary, was a politically valued form of action. As previously stated, the objective was each time to win a fight against state administrations: make their legal vision of the detainees' status – as someone who should be protected, legalized, or at least set free – prevail over the deportation order issued by the state. Such strategies however had to be efficient when enforced at the heart of the detention centre, leading to another major issue for all members of the team: as cases had to be solved quickly using an ever-narrowing protective law, *Cimade* lawyers had to select which case they would actually bring to court, according to the time they had and to the chances each case had to be won before a judge.

This logic of selection and the general pressure *Cimade* lawyers had to cope with – each of them had to receive as much as 40 people on a daily basis, with only a few minutes to assess each case – lead them to adopt a practical and technical approach to their use of legal provisions, focusing primarily on those that were designed to protect certain categories of immigrants against

deportation (see Coutin 2000; Hagan 1994). In these cases, the tactical use of law was limited to what was essential to frame legal action when possible.

This appeared clearly in the interviews I observed day after day at *Le Sernans*. When taking his seat in front of the *Cimade* lawyer, the detainee usually came with questions, and a personal story to tell – but whether his questions were precise or not, the conversation would be quickly reoriented by the lawyer's own questions, which only aimed at checking whether the immigrant's life story could match one of the legally protected categories. This appeared for example in the case of a young man from Kosovo, received one afternoon by *Hanna*, one of the lawyers. The young man, facing deportation for being undocumented, first stated he wanted to file an asylum claim. Being questioned by *Hanna* on his "political problems" in Kosovo, he answered that his problem was not really political – that above all, he did not have a home and that there was "nothing for [him] over there". *Hanna* immediately stopped him: "This is not an asylum case. We can do it if you want, but I can guarantee you a hundred percent it won't work." As the young man clearly showed his disappointment, she went on with a series of legally-oriented questions: "How long have you been in France? Do you have family here? Somebody to house you? Are you married or do you have a girlfriend; do you have children here?" The young man's answer to each question was negative. *Hanna* finally told him there was not much to do in his case – which brought him to reply that he could still refuse to board on the flight to Kosovo that was to be reserved for him. *Hanna* nodded: "Yes, you can do that, but just remember you can be prosecuted for this – it can lead you to jail…" The young Kosovar finally said he would "see", and left the office (fieldnotes, *Le Sernans*, 11/04/2005).

In this interview, the information the detainee provided on his situation was immediately framed and selected by *Hanna* in reference to a series of legal provisions that might have protected him against deportation. The young man was thus granted with a series of potential "legal identities" (Lascoumes 1990) that his own story never happened to match exactly. He first could not be a credible asylum seeker, which lead *Hanna* to review all other legal provisions available against deportation: at the time the observation was conducted, immigrants who had been living in France for more than ten years, who were married or had a marriage project with a French citizen or finally had French children, could not legally be deported. In the same way, deported immigrants who could prove they had a stable address in France could be at least freed from immigration detention and allowed to prepare their departure at home – another legal situation the young Kosovar, again, could not match.

Many similar examples could be provided of the way *Cimade* lawyers organise interviews around the legal resources that may be used to challenge each decision of removal in the minimum time. Questions were often presented in a precise order, from the most efficient against the state to the least susceptible to "work", a logic usually described in sociologies of collective action as the reason for a "de-politicized" and "bureaucratic" turn in legal activism (Agrikoliansky 2010).

In the case of *Cimade* lawyers, this remark should be mitigated: first, because members of the team remained attached, as we have seen, to an activist ethos where the main goal was to "win a fight" against state officials. Their emotional reaction to the everyday work in detention thus depended on their capacity to grant it an activist dimension: a "dull" or "inefficient" day was marked by unsuccessful litigation, or no litigation occasion at all. The occurrence of a "good case" – e.g., a challenging case that was legally interesting *and* opened the possibility of going to court and winning against a state administration – brought opposite comments: *Cimade* lawyers typically insisted they "finally felt useful" and that such cases "justified their presence" inside detention centres. The technicality of legal issues inside the detention centre did not induce bureaucratic coldness: in a context where the problem was often the impossibility to provide legal help, a legally technical issue brought a possible fight, and a strong emotional commitment from the lawyers (Hochschild 1979)[4]. Such a commitment, and a sharp knowledge of immigration law and its practical ways, enabled the lawyers to go on with their legal activism in spite of its obvious limits.

Second, because a series of formal arrangements had been set in the organisation of their work, to move from the everyday succession of individual cases to a global synthesis with a more obvious political impact. Remarkable cases were transcribed every week and month and transmitted to the national siege of the organisation – in order to be finally used in *Cimade's* annual report on the state of detention centres. But above all, this legal activism was designed to be systematic: its goal was to conduct "guerrilla warfare" against state administration through the accumulation of legal actions. In the case of *Le Sernans*, this legal fight happened inside a small social arena connecting the centre's *Cimade* team, "friendly" lawyers or advocates outside, as well as "foes" – local immigration officers from the surrounding prefectures – and finally judges from the local courts: as in the legal "systems of contact" described by *Niklas Luhmann* (1969), most of these actors knew each other well and were involved in a game of legal victories and defeats with one another. But the effect of this activity on the very enforcement of border control remains to be examined.

Challenging and reassessing the border

The systematic legal expertise of the detainee's situation that has just been described is not only a way to organize activist litigation: it has a direct im-

4 This sometimes very emotional involvement into apparently technical legal cases could be witnessed in the centre on a daily basis: A "good case" was one that made lawyers leave their chair and frantically walk from one office to another to send faxes, while engaging in enthusiastic discussions on the legal issues raised and the litigation "tricks" they could use to win it in court. Most of these conversations were focused on highly technical legal details. They usually excluded the immigrant, who watched in disbelief the activity of the two lawyers – and it only became accessible to the observing sociologist after a thorough explanation.

pact on the enforcement of deportations, which means it both affects the way public force may be exercized on immigrants, and the very destiny of those immigrants who may either face removal or legalisation. In this sense, the legal activity of *Cimade* lawyers affects directly the legal and material border separating immigrants who will be deported and those who will be granted a more or less definitive right to stay. The strategic litigation I just described may actually be both seen as a way to *challenge* this border, as a way to *shift* it, and sometimes, as a way to *reaffirm* it. In the precedent case, the deportation indeed seemed to become more and more unavoidable and legitimate as the interview went on, and none of the "protective" categories seemed to fit the detainee's situation. In the very dynamic of the action, the legal border between deportable and non-deportable foreigners was then reassessed, and finally re-asserted. In the particular configuration of *rétention* where the entire organisation of the centre aimed at materially enforcing legal decisions, this legal review of deportation was always simultaneously a re-negotiation of the material use of force to effectively remove the immigrant – a use of force that might be challenged and eventually stopped, or confirmed, as was the case here. Quite significantly, the last possibility that was indeed left to the immigrant at the end of the conversation was the physical confrontation with state force – the rebellion against police escort at the moment of forced boarding, which could hardly bring to a "victory" against state authorities, as it could itself be considered a felony and legally prosecuted.

Cimade lawyers in *rétention* can then be considered as both challengers and contenders of the way the border was being officially proclaimed and materialized in immigration detention, and as co-producers of this same border. At the same time, this "negotiation" of border enforcement was also a negotiation of the differential legal belonging of immigrants to the nation-state: in other words, it was a negotiation over their capacity to righteously claim, if not full citizenship, at least certain rights and the right to stay in France considering their family ties to the country, the time they had spent in it, or the protection they might obtain as asylum seekers. In the case examined here, the interviewed immigrant did not happen to own any of those social ties to France, and therefore remained – legally and physically – outside the nation state as a community of citizens. Throughout my observations, this type of situation, where there seemed to be no way for the lawyers to legally challenge the deportation, was overwhelmingly frequent[5]. But even when the removal order itself could not be legally repealed, the small office of the *Cimade* at *Le Sernans* remained a place where the differential "belonging" of deported immigrants to the French society, and their individual immigration strategy, could be debated and modified. The last section of this presentation

5 On a total of 190 cases of *reconduites à la frontière*, (one of the measures of deportation in French law) only eight legal motions were filed against the deportation order (4 %). In 100 cases (53 % of the total), no intervention (whether legal motion or else) was started by the lawyers (Fischer 2017).

will briefly address the consequences of this kind of debate on the immigrant's own immigration project.

Negotiating immigration strategies: consequences on the immigrant's perception of his own career

Indeed, *Cimade* lawyer's legal expertise may influence the immigrant's subjective perception of his own immigration strategy, both past and future. The notion of "institutional career" proves very useful when addressing these individual changes brought by the experience of *rétention* and a passage through the *Cimade* office (Goffman 1961). The notion refers in general both to the succession of objective positions that an actor occupies during his life, and to the way he considers them subjectively. But in the case of immigrants, such a career is always – to quote French scholar *Alexis Spire* – a "paper career" (Spire 2005): Each phase of the migration process involves a relation to the state, with each attribution or denial of a legal status influencing the way the immigrant coins and modifies his own migration strategy and his projects. In this perspective, the arrest, *rétention* and interviews with the *Cimade* were another phase of this same problematic relationship to the state (Peutz 2006): while modulating state enforcement of the border, *Cimade* lawyers also reoriented the immigrants' social pathway and immigration strategies.

In many cases where no actual legal action was possible, the lawyers indeed acted themselves as "strategic advisors", providing detainees with practical tips on the best way to act in their situation. This happened for example in the case of a 21-year-old man from Burkina Faso whose deportation could not be challenged, in spite of his project of marriage with a French young woman. After telling him that he did not "match the conditions required to stay in France", the *Cimade* lawyer who interviewed him concluded by saying:

> "Well, if the consulate issues you a pass, you will be deported, but – this doesn't stop your girlfriend to come and meet you in Burkina and get married with you over there. You get married before the French consulate and with that, you can ask for a visa to come back to France."

The young man finally agreed to choose this solution in case he was eventually sent back (fieldnotes, *Le Sernans*, 05/04/2005). In this case, the interview was then the occasion for a re-arrangement of the migrant's personal immigration strategy he finally accepted, but that was originally imposed by the lawyer's own vision of available legal resources. Although the young man was then plainly "visible" to the state and his deportation order could not be legally challenged in itself, the strategy aimed at using another set of legal provisions to counter the legal removal: marrying a French woman in the country of origin could enable the migrant to legally go back to France – and stay there as a resident alien, as the spouse of a French citizen.

In this situation, the legal strategy was all the more easily accepted by the migrant as it remained coherent with his own project: eventually stay in France and get married. The forced return to Burkina did not mean to him the definite loss of all control over his fate; it eventually was a costly, but altogether acceptable incident within his career. In other situations, however, the solution – and in many cases, the absence of a solution – proposed by the *Cimade* lawyer accentuated the despair of deported immigrants already stressed by their arrest and confinement. This happened for example when *Hanna* received a 25-year-old man from Cameroon and had to tell him that no legal action was possible in his situation. In a very tense tone, he answered by detailing his immigrant background: he had come to France through a Franco-Cameroonian agreement, and at this time he felt "directed, confident, there was someone to counsel [him]". He then entered the country legally with a visa and asked for a residence permit which was finally refused. In the meantime, he discovered that the cousin who housed him stole money from him (as he said, she "betrayed him"), so he left her flat and began to work illegally while staying with various friends. He finally was arrested in a supermarket for shop-lifting – an offence he strongly denied – was first sent to prison and then in different *centres de rétention* before winding up at *Le Sernans*. He concluded his story on a bitter statement: "So now, my dear lady, you are here helping me and it's all very nice, but I have done all this, tried everything and now I am told I have to go back – well, what will I do in Cameroon? I am here and I can be sent back any moment, I don't know what to do, I need someone to give me directions". Facing him, *Hanna* had to insist on the legal dimension of her intervention to justify her treatment of the case: "I know it's tough – I am sorry, but you have to understand that there is the law, and administrations to enforce it. We at the *Cimade* disagree with that law, but all the same, I have to do something that is compatible with it if I want to help…" (fieldnotes, *Le Sernans*, 15/02/2005).

The immigrant here subjectively saw his own background as a loss of direction and "confidence", simultaneously in his legal relations to the institution – the loss of his formerly legal status and legal job – and in his social life that went more and more precarious – the collapse of family solidarity, the loss of a stable home, and forced movements to various confinement places concluded by forced removal. The effect of legal counsel was then lived as an even more brutal rupture in his personal life story. On the other hand, *Hanna*'s answer had to refer to the public critique *Cimade* spokespersons had been publicly formulating over the government's immigration policy (speaking from a collective "we"), in order to justify her own tactical use of current legal provisions. Her paradoxical legitimisation of the deportation order was made all the more obvious. The legal ground was here seen as the only legitimate field of action: in the face of legal decisions taken by civil servants, all non-legal arguments were disqualified in advance, while the legal defence of the *Cimade* lawyer actually proved inefficient. In the emergency situation of immigration detention, the impossibility to legally challenge the decisions from the administration immediately made them unquestionable.

In these two cases, the issue for *Cimade* lawyers was to renegotiate the immigrant's "deportability" – and to oppose to his deportation order the social connections he had built and kept with France, whether they referred to a family or professional relationship, or to an asylum claim for political protection. As we have seen, these links had to be "translated" into legal categories they had to fit in order to be taken into consideration by a court or any state authority. But this very activity of counselling had a direct consequence on the immigrant's subjective perception of his own "career" as a migrant, and on his future strategy of immigration and stay in Europe.

Conclusion: the effectivity and limits of a state-endorsed but independent critique

Two conclusive remarks can be further drawn from these two situations. First, the selection of cases by *Cimade* lawyers is a way to "sort out" immigrants and reorient their fate according to their eligibility for legalisation or release. But this activity is only one phase of selection in a broader process where the situation of immigrants is constantly assessed, and their fate redefined, by different actors with different logics and procedures: before detention, immigrants may first be stopped and frisked by the police – but they may never be detected or be simply released after this first inspection. They may be then kept in police custody and released by the police at that stage or be further brought to a detention centre; after being helped by human rights organisations inside, they may then be actually deported, legalized by a court, or more commonly released on the French territory at the end of their detention time with a deportation order still pending. This means re-orientations of the immigrant's career happen constantly and at every stage of their progression inside the deportation process, leading only a small number of immigrants to be finally deported – the rate of deportation orders being effectively enforced every year in France has indeed remained between 25 and 30 % in the past years (Fischer 2021).

This selection of deportable immigrants is, of course, socially biased: the most vulnerable to arrest and prolonged detention are the socially precarious immigrants easily spotted by the police and with only few connections to France and even less evidence to prove them – homeless immigrants are of course a most striking example. While being indeed helpful to many detained immigrants, activist litigation inside detention centres then has to be part of this general management of deportable immigrants. Such a logic of legal selection, coming from advocates who are also able, at the same time, to legally protect and help detained immigrants, points at the paradoxes of neo-liberal orders where a state-endorsed but independent critique may deploy within a repressive institution.

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