

France

The mobilisation of undocumented workers in France: discrimination and social invisibility

Pauline Vermeren

European University Viadrina (EUV)

Summary

Since 2005, protests and strikes by undocumented workers in France have prompted a number of questions about the presence of foreigners in France, and their integration into the economy and the labour market. Although foreigners were not considered as workers in the 90's, strikes have helped them to be recognized as important actors in the French labour market. The undocumented workers became visible in the public sphere because they took to the street, putting on a show to put pressure on politicians to obtain rights in France. Their strikes have helped to highlight the political and economic factors that made the illegal employment of undocumented migrants possible.

These movements have put in place a constellation of actors (associations, trade unions and collectives) who have given legal and social support to these workers and lobbied the government.

With these movements, the undocumented workers now need to obtain their regularisation. They are still foreigners without documents, but also workers: this is how the undocumented workers have sought to be recognized as legal persons, particularly under labour law. From a policy of hospitality towards undocumented people in the 90's, today there is a clear willingness to recognise undocumented workers that actively participate in the economy of French society.

We noticed the difficulty in finding undocumented women because most of them were not working in firms but in home services.

We define what the « sans-papiers » and the undocumented workers are in the French law and in the public sphere. We focus on the expression 'dissimulated

employment' and on the negative perception of foreigners ('they disturb 'national unity' or the 'national balance'), which encourages discriminatory practices.

In addition, European immigration policies which have been reduced to political discussions over repression and control.

At the end of this paper, we also explain the difficulties involved in obtaining a residency permit and particularly the arbitrariness and discriminatory practices of the prefectures. The institutionalisation of the prefect's discretionary power inevitably reinforces arbitrary and unfair practices. Immigration law has been constantly modified by decrees and circulars, which have been added to the laws already in place, rendering immigration law increasingly complex, untransparent and subject to exceptions.

Introduction

Since 2005, protests and strikes by undocumented workers in France have prompted a number of questions about the presence of foreigners in France and their integration into the economy and the labour market. Although foreigners¹ were not considered as workers in the 1990s, strikes have helped them to be recognised as important actors in the French labour market. This change in perception, this 'new given', is also what Didier and Eric Fassin evoke when discussing the 'race debate': *'what was hidden away has become ubiquitous, what we did not talk about has become commonplace.'*² The undocumented workers became visible in the public arena and their strikes helped to highlight the political and economic factors that made the illegal employment of undocumented migrants possible. What is more, these movements have put in place a constellation of actors (associations, trade unions and collectives), providing legal and social support to these workers and lobbying with the government on their behalf.

Thanks to these movements, we now talk about undocumented workers who need to obtain their regularisation. They are still undocumented foreigners, but workers first of all: this is how the undocumented workers have sought to be recognized as legal persons, particularly under labour law. In reality, this meant they took refuge in the most emblematic type of actions they had, the strike. And as such, with the support of the unions, including the CGT, this marked a turning point. While there was a policy of hospitality towards undocumented people in the 1990s, today there is a clear willingness to recognise undocumented workers that actively participate in the

¹ Please note that we differentiate between the categories 'foreigners' and 'immigrants'.

² Fassin, Didier et Fassin, Eric (dir.) (2006) «Introduction», in *De la question sociale à la question raciale ? Représenter la société française*, p.10.

economy of French society.

How far do these movements allow us to understand and explain the ambiguous position of undocumented workers, on the one hand needed as a labour force, but on the other invisible due to their illegal and precarious status. Firstly, we will examine the shift between the terms foreigner, immigrant and undocumented person and how the perception of the undocumented worker in France is due to, and part of, the migration context. We will then go on to propose an analysis that the movements of undocumented workers could be related to a search for recognition through means of social visibility. In the final stage we will look at the difficulty in obtaining a residence permit from the prefecture (administration) and the discrimination that prevails there.

1. The undocumented workers: economic logic and categorization

a) What are undocumented workers?

'Sans Papier'...

In France, the term 'sans papier' or 'undocumented person' refers to a foreigner, residing in a country without a valid residence permit. This term appeared in the political and administrative vocabulary in the late nineteenth century, at the same time as the introduction of strict rules that defined the conditions under which foreigners were allowed to stay. 'Undocumented' is different from 'illegal' in that it is not an official category, but rather a term created by those most concerned about drawing attention to the situation of this group of people. The use of the term 'undocumented' became more commonplace from the 1970s onwards. The tightening of immigration policies led to an increase in the number of 'undocumented' foreigners. It is, by definition, impossible to accurately quantify this phenomenon; according to the latest estimates (2005), between 60 000 and 200 000 people are living in France illegally. Given the importance that is attributed to the political treatment of illegal immigration and the brutality of expulsions by the state, the term 'undocumented' is mainly used by advocates of undocumented persons. They chose to use this term, not to refer to an infringement of the law, but rather to highlight the current absence of an official title for this group of people, leading to a deprivation of the rights that official residents have.³ Many studies have been done on the issue of illegal immigrants that are confined to an area of lawlessness, and the exclusion that follows from the prefix 'un-'. Having these papers

³ This definition can be found on the web site of the 'Cité Nationale de l'Histoire de l'Immigration' ('CNHI') <http://www.histoire-immigration.fr/histoire-de-l-immigration/questions-contemporaines/les-mots/qu-est-ce-qu-un-sans-papiers>

has become the equivalent of the recognition of a status, a place in society and access to citizenship.

Since the 1990s, undocumented people has tallied with the political construction of collective actions against illegal immigrants in France. A whole series of international human rights treaties and conventions were invoked in their favour.⁴ These texts encompass topics as diverse as health, physical integrity, subsistence minimum, housing, working conditions, education, family life or civil rights. Article 6 of the International Covenant on Economic, Social and Cultural Rights, for example, refers to 'the right of everyone to earn a living through work that is freely chosen or accepted', and Article 7 states 'the right of everyone to the enjoyment of just and favorable working conditions.' Among these conditions, we also find: '(the right to) a remuneration for all employees, that provides, as a minimum:

- fair wages and equal remuneration for work of similar value without distinction of any kind [...];
- a decent living for themselves and their families [...] ;
- or even 'rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays.'⁵

'To request that human rights are applied to undocumented immigrants, to admit that such an application is admissible and legitimate,' says Francis Brown, 'is to build upon the fundamental rights of all men to recognize illegal foreigners as human beings, despite specific laws and drastic measures that sometimes seem to deny it.'⁶

... and workers

Although 'undocumented people' have been around for a long time, until the 2000s no one has ever really asked themselves how they could survive. This topic was often avoided, as actively taking part in the labour market was considered an offense. And yet, work is one of their most important concerns. In fact, it sometimes seems artificial to differentiate between 'undocumented person' and 'undocumented worker'. But in terms of the overarching strategy, focusing on the area of work has an advantage.

'We still have a certain shame to talk about how people survived,' Alain Morice admits. 'When someone is denied citizenship, the image that we have of him is linked to theft, trafficking, exploitation. (...) During my surveys, many people were very reluctant to tell me

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms; Convention on the Rights of the Child International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; European Social Charter (complement to the European Convention on Human Rights); Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵ <http://www2.ohchr.org/french/law/ceschr.htm>

⁶ Brun, François (2006/2) *Immigrés, sans-papiers, des travailleurs en deçà de la citoyenneté*

what they did for a living. It was as if they were ashamed, as if it was a mistake. This was also very obvious in the ideology that uses the term 'illegal worker'; whereas from a legal point of view it does not hold, there are no such illegal workers in the Labour Code, there are only employers who do undeclared or dissimulated (term used since 1997) work themselves. And in fact, saying 'illegal workers' is very symptomatic to the feeling of an offense.'

Replacing 'illegal' with 'undocumented', because we are talking about a social construction here, allows those who were hiding and had become invisible to step out and become visible. It was thus important to ask where these undocumented people were working in order to determine their working condition and to be aware of how they found these jobs. Today, undocumented workers are mostly men between 20 and 40 who have emigrated in the hope of a better life, in order to help their families back home or even bring their family over. Others are asylum seekers. When it comes to their administrative position, the undocumented workers are characterized above all by a lack of work authorisation. They are, in large part, a work force deprived of basic rights, because they have no papers and are hence largely confined to certain sectors of the economy. They mainly work in construction, catering and cleaning; sectors with bad salaries, where the working conditions are difficult and challenging and require great physical abilities and considerable flexibility and where it is not possible to relocate production. Most of these workers are Africans (mainly from Sub-Saharan Africa and the Maghreb), Chinese, Pakistanis, Tamils, Turks, Afghans, Chechens and Kosovars.

The concept of undocumented workers has slowly replaced that of the immigrant worker. The term 'undocumented person' refers to the obligation to have 'papers' to live and work lawfully in the country. This requirement has gradually been imposed when the state started to feel the urge to control the people that enter its territory and labor market more closely. By establishing this framework for immigration, the state has, through 'the creation of a legality', as Noiriél Gerard describes it, 'opened the path (...) to the possibility of being illegal, or in other words it allowed it to say that there are 'illegal' immigrants.'⁷ But the 'possibility of illegality' is particularly high here because this legality, or status of being legal, which in reality translates to the possession of a residence permit, is not absolute or fixed but on the contrary highly dependent of a given political and economic context, which by definition is fickle. Because of that, foreigners will be granted residence permits only when the government agrees to do so, in light of their particular demographic and economic needs, and on top of that in the short term. These people thus have very little control over their destiny; their mobilisation offers the opportunity to establish themselves as subjects of law in order to

⁷ Noiriél, Gérard (1988) *Le creuset français, Histoire de l'immigration XIXe-XXe siècle*

secure a legal existence.

Employers...

Returning to the notion of 'dissimulated employment' (a term used previously by Alain Morice) allows us to adopt a different point of view, in that we look at illegal work not only as an infringement on the part of workers but rather on the part of employers. Before the 30th of June 2007, Bernard Schmid tells us, employers were obliged to verify themselves if their workforce complied with the legal requirements, and could justify themselves by saying that they didn't have the competencies to verify the validity of a residence permit. Since the decree of 1 July 2007, that implements the law of 24 July 2006 (also known as the 'Sarkozy Law'), the employer has an obligation to have the authenticity of a residence permit verified by the prefectural authorities. However, the employer can continue to commit fraud:

- either by trying to hide the situation of the employee,
- or by trying to appeal to Article 40 of the 'law Hortefeux', that states that the employer, if no other labor force is available (e.g. difficulties in terms of recruitment, particular situation in the labor market, a position requiring specific skills) and, if the employer can justify the hiring (e.g. no other candidate in the recruitment pool), he has the right to hire an undocumented person who must then be regulated.

It is also often cheaper for the employer to pay a fine for hiring undocumented workers than getting rid of his employees. No matter from what perspective, sanctions are generally small relative to the degree of offense and the labor inspection puts in place only a limited number of measures to control employers. This laxity in control of employers is due either to forms of political complicity or otherwise to the desire to avoid 'cutting' thousands of jobs. Violaine Carrère insists that the work of illegal immigrants masks an economic and social reality. Most of the dissimulated work is not so because of the foreigners and undocumented people employed, but because of a political will to stigmatise and to present it as such. Dissimulated work also includes hiring people who work without declaring their activities, without payment of their national insurance contribution or overtime worked, etc...

b) Perception of 'a foreigner'

The ease with which society does tolerate, but does not recognise, a part of its population socially and legally is caused by the phenomenon of a certain negative perception of foreigners, widely discussed by French historians and sociologists

(Noiriel Gerard, Eric and Didier Fassin, Laboratory of the URMIS-University Paris 7, etc.), but also by associations and groups (Cimade, MRAP, Indigenous of the Republic, etc.). We can see how the depiction of foreigners favours discriminatory practices. We will discuss some specific forms of discrimination based on nationality, but we will deal more specifically with the concept of 'foreigners' as a national stigma. For this purpose, we will only discuss the male undocumented workers. It is nevertheless important to be aware that the association 'Femmes Egalité' (Equality for Women) is interested in the, often isolated, work of women (e.g. personal services, nannies, housekeepers, prostitution, etc.).

'Foreigners' as a category are ethnicised and racialised based on the fact that they are not French: they are different from the 'ethnically, true-born' French, a very questionable term and a category that is almost impossible to determine, but is nevertheless used all too often.⁸ The 'foreigner' (no matter if he has been in France for a month or for ten years) represents everything that does not reflect or hold the national values with which a French citizen identifies himself (religion, customs, etc.), and who, by not doing so, challenges 'the national identity' in a negative way.⁹ Gérard Noiriel explains that 'the gap between (French) nationals and foreigners is rooted in a much more fundamental divide between 'them' and 'us', a split encountered in all societies and all periods in history. (...) The French 'we' established itself at the end of the nineteenth century through the construction of negative images of foreigners, which was underlined by two big trends: the enemy they were fighting (at the time this was mainly the Germans) and the need to civilize primitive people (the natives of the colonial empire).'¹⁰

In France, and anywhere else abroad, 'the foreigner' is perceived as a disturbing factor, as someone who disrupts the national balance. He is perceived as 'the other', from outside of the alleged national unity, in which only the French recognize one and another.¹¹ 'France for the French' is the kind of fantasy with which a few 'hardcore' nationals want to assure ownership of their nation.¹² The image of 'the foreigner'¹³ is constructed through, and constantly feeding on, a mixture of political discourse and

⁸ Le Bras, Hervé (1998), « Les Français de souche existent-ils ? », *Quaderni*, n°36, pp.83-96.

⁹ See: Noiriel, Gérard (2007), *À quoi sert « l'identité nationale » ?*. Marseille : Editions Agone.

¹⁰ *Le « modèle français » d'immigration*, par Gérard Noiriel. <http://www.ldh-toulon.net/spip.php?article4479>
Also: Mbembe, Achille (2010), *Sortir de la grande nuit. Essai sur l'Afrique décolonisée*, Paris : La Découverte, p.68, p.74.

¹¹ See: Fassin, Didier, Morice, Alain, et Quiminal, Catherine (1997) *Les lois de l'inhospitalité : Les politiques de l'immigration à l'épreuve des sans-papiers*, Paris : La Découverte.

¹² See: Balibar, Etienne, Wallerstein, Immanuel (1988) *Race, Nation classe* ; Anderson, Benedict (1996) *L'imaginaire national* ; Bancel, Nicolas, Blanchard, Pascal, et Vergès, Françoise (2003) *La république coloniale* ; Bancel, Nicolas, Blanchard, Pascal, et Lemaire, Sandrine (2005) *La fracture coloniale*.

¹³ *Figures de l'étranger*, Tumultes, n°5, L'Harmattan, novembre 1994.

everyday experiences.¹⁴ And in some minds – in the majority, really – the depiction of foreigners becomes one of an element that destabilizes the national prosperity, an illusion that persists with ‘white’ and Western men. The stranger is too commonly considered to be a, potentially illegal, man with no resources or skills, living in a shelter, and too different in every aspect. As this man seems to come from such a different place, he would never be able to live like ‘us’. Symptomatically, ‘increasing the plurality of cultures remains something that is fundamentally missing from the Republican culture of France.’¹⁵ For Etienne Balibar, ‘the foreigner is an ambivalent figure that clearly reveals the affects of attraction and repulsion, of fascination and even hatred.’¹⁶

In his article ‘From foreigner to immigrant’,¹⁷ Alexis Spire reflects on the shift from one word to another, and repeats the definition of the High Council for Integration (Haut Conseil à l’intégration, HCI) which, in 1990, defines an immigrant from a statistical point of view as ‘any person born abroad, in a foreign country, who lives in France.’ He distinguishes between the two legal and statistical, but also social, categories of ‘foreigner’ and ‘immigrant’. The first mainly refers to a European citizen, from the middle class, who resides in the territory temporarily, while the ‘immigrant’ is from Maghreb and is assumed to want to settle down permanently, even under illegal conditions. The stigmas (irreconcilable differences, inability to integrate, the extra load on the economy, criminality, etc.) that are being put on foreigners catapulted the foreigners’ way of living to the top of the political agenda. Because ‘the foreigner is perceived as a problem, a risk or threat’,¹⁸ Nicolas Sarkozy, following his election, set up the Department of Immigration, Integration, National Identity and Co-Development on 18 May 2007:

‘On the other hand, we cannot say we have a controlled immigration, if our country is not even able to fight against illegal immigration. You will thus strengthen the technical means in place since 2002, in particular concerning biometrics, to fight against illegal immigration. You will continue the policy of fighting against networks of illegal immigration and illegal employment and you will take the necessary steps to greatly simplify the expulsion procedures. You will set demanding targets for yourself in terms of deportation. The regularisations will be implemented on a case-by-case approach, with the only exception if they are justified on humanitarian grounds. (Letter of mission statement from Nicolas Sarkozy to Brice Hortefeux, 9th of July 2007).

Bernard Schmid of the MRAP confirms that this is ‘part of a police mentality that

¹⁴ The construction of a certain vision on immigration in France and in Europe is also analysed in: Hmed, Choukri et Laurens, Sylvain (dir.) (2008). « L’invention de l’immigration », *Revue Agone*, n° 40.

¹⁵ Fassin, Eric (dir.) (2006) « Aveugles à la race ou au racisme ? Une approche stratégique », in *De la question sociale la question raciale ? Représenter la société française*, p.110.

¹⁶ <http://www.telerama.fr/idees/etienne-balibar-la-condition-d-etranger-se-definit-moins-par-le-passeport-que-par-le-statut-precaire.67997.php>

¹⁷ Spire, Alexis (septembre 1999), « De l’étranger à l’immigré ». *Actes de la recherche en sciences sociales*, vol.129, pp.50-56.

¹⁸ Valluy, Jérôme, « Introduction. Quelles sont les origines du ministère de l’Identité nationale et de l’Immigration ? », in Valluy, Jérôme (dir.) (printemps 2008) *Xénophobie de gouvernement, nationalisme d’état*, p.13.

considers immigration as a destabilising and high risk factor. It doesn't matter if people are convinced or if they discuss the political effects, what [we] are interested in is what the political discourse triggers in society. ' For Jérôme Valluy,¹⁹ the creation of a Ministry of National Identity and Immigration in 2007 'reflects a phenomenon that runs deeper, that shows the institutional materialization of a political culture, shaped by decades of xenophobic elites, including technocrats, but also politicians or intellectuals, who created the idea that the presence of foreigners is problematic by definition.'²⁰

That immigration is perceived as a problem, says Noiriel, is part of the journalistic-political discourse that has been ongoing since the 1880s and whose perception is rooted in nationalist rhetoric. In 1989, Prime Minister Michel Rocard also contributed to that discourse, using it continuously in an attempt to offer an explanation for migration, which was already perceived as a hindrance to 'national prosperity': 'France can not accommodate all the misery of the world, but needs to faithfully carry its part.' These words reflect a reluctance towards recognising freedom of movement and to associating the migration of humans with the economic status of a country. Although trade of capital and goods characterize the system of globalization, the movement of people is much more complex and problematic. The evolution these policies have taken nowadays show an excessive development of surveillance and controls of people (cf. Foucault) by means of borders, visas, passports and – as mentioned before – biometric identification, but also through the development of databases. These are built as a preventive measure, but rather as a consequence of stigmatizing prejudices and suspicions.

In *Le Monde Magazine*, the historian Pap Ndiaye says that 'the 2009 report of the National Consultative Commission on Human Rights expressed concern about the 'alarming increase' of 'racist, xenophobic and anti-Semitic' incidents in France, a phenomenon that can also be observed in recent years in most European countries. (...) One too often hears of discourses, that are outspoken and uninhibitedly racist (...). When it comes to racism, the French government has a discretion that is rarely seen otherwise.'²¹

¹⁹ On the topic of the state's xenophobia also see: Le Cour Grandmaison, Olivier (2009) *La république impériale. Politique et racisme d'Etat*. Paris : Fayard.

²⁰ Valluy, Jérôme, « Introduction. Quelles sont les origines du ministère de l'Identité nationale et de l'Immigration ? », in Valluy, Jérôme (dir.) (printemps 2008) *Xénophobie de gouvernement, nationalisme d'état*, p.12.

²¹ Interview with Pap Ndiaye, « En finir avec la peur de l'autre », *Le Monde Magazine*, n°73, samedi 5 février 2011.

2. The undocumented workers: a consequence of migration policy?

a) The French context

Immigration policy consists of two parts. On the one hand the policy deals with migratory flows (entry and requirements for residency), as well as asylum, although this topic is also dealt with by the Geneva Convention of 1951 and in France by the Ministry of Foreign Affairs (from 2007 until 2010 it was dealt with by the Ministry of Integration, Immigration, National Identity and Co-development). On the other hand it deals with 'managing' the immigrants that are already in the country. One does not go without the other.

From a legal point of view, the decree of 2 November 1945 regulates, for the first time in France, the status of foreigners. It was subsequently replaced by the Code of Entry and Residence and the Right to Asylum of foreigners in France (Code de l'Entrée et du Séjour des Etrangers en France et du Droit d'Asile, CESEDA), established in 2004 and which came into force on 1 May 2005. The evolution in immigration policy shows that, as from 1974, the official end of labor migration, the succession of policies, its continuity and its objective is now euphemistically called 'management of migration flows.' However, given the demographics of developed countries (aging population and population control), but also in view of the inevitable and indispensable globalization, industrialized countries are well aware that they need immigration in the future to provide them with the necessary labor force.

Between 1945 and 1965 there was a vain attempt to control immigration. A proactive policy was put in place, calling for foreign labor force to help with economic recovery and reconstruction after the war. This policy was accompanied by an assimilationist discourse, advocating ethnically, geographically and culturally balanced immigration, allowing the naturalisation of individuals and their adherents in the new national community in the long run.

The following decade (1955-1966) however, there was more support for the development of spontaneous migration: foreign workers would enter France under the guise of a passport for tourism, or even illegally. They would then manage to be hired, and would then easily obtain a residence permit and a work card that regulated their situation.

From 1966 to 1974, the State realises their laxity and tries to regain control. Confronted with the adoption of new immigration policies, the MRAP initiates a new law against racism, which passes in 1972.

Closed borders and discussions of integration mark the period from 1974 to 1995.

In 1970, the authorities are more concerned with 'managing the migration flows' and in 1972, Marcellin-Fontanet's memorandum (the Minister of Interior and Minister of Labour respectively) marks the stop of the regularisations. The government, in response to the crisis following the oil shock of 1973, announces the closure of its borders. In 1974, a resolution demands the suspension of labor immigration and a policy of repulsion is gradually implemented; however, not successfully: the immigrants that France wants to 'keep', the Spanish and Portuguese, leave, bringing the number (of returnees, ed.) to the total of one million the state was aiming for, while the North Africans from Maghreb, the ones that were hoped to be leaving, remained in France, despite the crisis. Only with the 'Bonnet' law of 10 January 1980 it becomes possible to amend the law of 1945, giving the administration the power to send illegal immigrants home.

The 1980s and 1990s experienced a tightening of immigration policies and an increasing questioning of the place of Islam, resulting in a feeling of insecurity. In 1996, undocumented people who squatted St. Bernard Church in Paris and went on a hunger strike were able to draw a lot of attention to the human problematic aspect of these policies. The police raid on the church shocked the public opinion.

'One of the most important outcomes of 1996 is the fact that this discussion has become almost like a national cause, marked by the establishment of support groups and by undocumented people, who are organizing themselves in groups as well. (...) This is also when the term 'undocumented person' first originated and was included into the dictionary; while the term already existed before, it was used in a much more general sense.'²²

The 2000s are characterised by two important events:

- The Sarkozy law on the entry and residence of foreigners from 26 November 2003. The main objective is to end the inability of the state to control migration flows. Particular attention is paid to the fight against communalism ('communautarisme' as it is called in France) by means of integration.
- The Sarkozy law II of 24 July 2006, following the crisis in the outskirts ('banlieues') of November 2005. The Minister of the Interior starts working on a new plan on the topic of entry and residence of foreigners with the slogan 'yes to selective immigration we can control, no to immigration as something that just happens (to us)'; in other words immigration of 'labour force' is deemed more important than 'family' immigration.

In the meanwhile the European policy is being shaped in the spirit of deterrence, repression and with the goal of combating illegal immigration. This is partially caused

²² Interview with Alain Morice.

by the impact of new migration flows (from Eastern Europe and Central Asia) and the importance of Islamist terrorism, which in turn encouraged security policies amalgamating class, religion and 'race'.

b) The European context

'France is a country with a long tradition of migration, even if we did not really recognize it as such,' says Alain Morice. 'What is important is that after the two world wars there was the idea of reconstruction. (...) The only thing that the European countries, first 12, later 25 and now 27, were able to agree on, was the fact that everything related to the issue of work will continue to fall under the sovereignty of each individual country.' And, according to Violaine Carrère, 'when France had the choice, it did not choose what was the most liberal thing to do.' 'I have the impression,' she adds, 'that each country in turn has been accused of laxity.' In half a century of immigration, France was confronted consecutively with problems such as the opposability of employment, its constant ambition of a state-controlled immigration which it was never able to fully reach, its preoccupation of putting in place restrictive and dissuasive policies which ended up having only little effect, and also with the, badly received, need to allow (migratory) flows to resume. All these poorly articulated policies gave the public opinion, also molded by the National Front since the 1980s, the impression that the country was coming up with new immigration policies all the time.

The integration policy in France, largely based on autonomous assimilation and integration, has long been passive on the account of multiculturalism and the fight against discrimination. The policy is considered an extreme 'republicanist' position that, under the guise of an abstract and universal conception of citizenship, is indifferent (and even blind) to racism and discrimination.²³ This policy seemed to be supported by a broad political consensus both on the right and the left, more than the policy on migration flows was. It was a controversial topic in French political debate (and beyond that due to the simplistic view of the extreme right). In reality however the policy of migration flows is mainly decided upon at EU level; member states, regardless of their internal policy, can only take limited action when it comes to migration. After a period of having shut down wage labor immigration from 1974 until today, Europe is now in line with the communitarisation of its immigration and asylum policy since the 1st of May 2004, turning more and more towards bilateral labor conventions with the South, in exchange for their commitment to control the borders better.

²³ Interview with Pap Ndiaye. « En finir avec la peur de l'autre » (samedi 5 février 2011). *Le Monde Magazine*, n°73. Also see: Mbembe, Achille (2010) *Sortir de la grande nuit. Essai sur l'Afrique décolonisée*. Paris : La Découverte.

At the Tampere summit in 1999,²⁴ a shared immigration policy is agreed upon: the policy starts from the evaluation of the economic and demographic needs of the European Union and the individual situation of the country of origin. From 2000 until today, the security dimension appears in every convention on immigration and asylum, seeking the strengthening of border control by outsourcing projects, resulting in the development of migration camps at Europe's borders.

The increase of undocumented people seems to be a consequence of the tightening of immigration policies, not only in France but also in Europe. In fact, immigration policy focuses on border management and the population of foreigners on its territory. Rather than only being an immigration policy, one can speak of a policy of immigration control, characterised by visa requirements, border and carrier control, cross-border cooperation, restrictions on granting asylum, expulsion and detention of foreigners, and at last even of an anti-migration policy.

Migration policy, in general, and in this case in Europe, is now reduced to a policy of repression and control of people and borders. For States, the migration issue is about the bastion of national sovereignty, which in turn reflects the fantasy that comes from the myth of a national 'oneness'. When it comes to labor force for example, immigration policy tends to impose on foreigners when and where they must come; 'you are here because we need you, but we would like to do without you.' As a consequence, immigration policies are often accompanied by xenophobia and racism. Like a fortress, Europe has established very strict immigration policies, particularly restrictive concerning third country nationals. This does however not prevent EU nationals from also being treated as 'second class citizens.' Which is exactly the criticism on the immigration law: it violates human rights of the foreigners', far too often considered as 'subhumans'. Claire Rodier²⁵ rightly explains why immigration policy is not only a national matter. She points out the influence of the European Union's immigration policy, in this case particularly for France, although not all EU member states agree on it. Indeed, the reality of managing migration issues is balancing between a management on a European level and a purely national approach. As Paolo Cuttitta explained, the state is de facto dependent on the geographical, cultural, economic and political area to which it belongs, which in turn has its own place in the global system:

'Not only are today's states no longer the only actors in the global arena, for many aspects they are not even the most important players. They have to confront, coexist and compete with other actors that are also capable of acting on a global scale, with other authorities which juxtapose and overlap with them, and even, at least partially, substitute for States when it comes to making important decisions: intergovernmental organizations, NGOs,

²⁴ http://www.europarl.europa.eu/summits/tam_fr.htm#a

²⁵ Rodier, Claire (25 octobre 2007), « Tribune ».

multinational corporations, organized crime cartels, terrorist organizations, ethnic and religious communities, hybrid entities such as the World Bank for trade, etc. The list is far from exhaustive. The result is that the state's power is significantly eroded in all respects: economically, legally, culturally, military, etc'.²⁶

Since the Amsterdam Treaty of 1997²⁷, whose aim was to harmonize the countries in terms of communitarisation, the measures Europe takes with regard to immigrants are becoming increasingly violent. In view of the demands to protect refugees, France is at odds with the role it has as a host country. Because in reality France indeed mainly tries to, by means of laws, decrees and circulars, deter asylum seekers. The rejection of asylum applications is largely due to the stigmatization of exile as it being a false pretence for asking refuge. Finally, a number of measures, including the strengthening of border controls, using mechanisms such as Frontex or Eurodac files, or even the outsourcing of the surveillance (in North Africa for example) with the mission to retain upstream asylum seekers, have led to the genuine tracking of foreigners, who are now consistently assumed as potentially illegal.

By denying foreigners access to their territory, European countries are also denying shelter to those fleeing persecution, in violation of the Geneva Convention on refugees that they have all ratified.

I would also like to add the very worrying issue of the refugee camps (centers and detention facilities, camps all over Europe) that depict foreigners as criminals and create a dehumanising vision of migrants. The threat of exiles, a feeling created and shaped through nationalist ideas and the sense of safety, have reduced the singling out of foreigners and their confinement to such camps to something trivial. Despite all these surveillance systems and closed borders, European governments find that the migrants desire to enter Europe is as ever-present as it was before. Repressive measures have never kept anyone from exercising their freedom of speech and movement, but it has made the travels and the attempts to cross the borders much more dangerous, causing the deaths of many migrants. And even if they are able to settle in, these measures have also made living conditions much more stringent.

As a direct consequence of this institutionalised xenophobia and the European migration policy - a policy of deterrence, characterized by a militarisation of borders - many support groups for migrants and refugees were established and became increasingly professionalised. These associations (e.g. Gist, Cimade, RESF, Anafi, Migreurop, ...) act on a national or European level, and may thus be partly subsidised by the state in which they are campaigning and protesting. Together with the

²⁶ « Le monde-frontière. Le contrôle de l'immigration dans l'espace globalisé », in Bigo, Didier (dir.) (hiver 2007) *Circulation et archipels de l'exception*.

²⁷ <http://eur-lex.europa.eu/fr/treaties/dat/11997D/htm/11997D.html>

appearance of these associations, refugees and migrants increasingly organise themselves in collectives, based on nationality and some subsidised by the country of origin (e.g. Malian association of the expelled, collectives of undocumented people...). With this resistance it is hoped to change the feeling of immigration as a problem and rather see it as what it is: a universal phenomenon inherent in humanity. According to Claire Rodier, 'rather than retreating into this suicidal logic, it is time to respond by inventing a new way for the people of this planet to live together, with flexible borders as one of the foundations. It should also be kept in mind that the freedom of movement also entails the right to return home, which would probably be what most of the migrants would want, if they would be given the choice.'²⁸

3. The mobilisation of undocumented workers

a) Challenges and limitations

'Nothing happens just like that in France,' says Francine Blanche of the CGT, 'there always needs to be some pressure.' And Alain Morice adds: 'We also notice that in France, unlike in Italy and Spain, all regularisations have been obtained through a fight and never by means of a publicly communicated policy.' Also, 'society seems to only start asking questions about this issue, when the fight has become visible in a spectacular way.'²⁹ This more or less sums up the case for the mobilisation of undocumented workers.

Since 2005, the waves of strikes of undocumented workers have highlighted the ambiguity of the discourses and practices of both the government and the employers, 'we have set foot in an anthill. (...) The government expels 10% and keeps 90%; in fact they as such, hypocritically, create a turnover of labor force,' says Francine Blanche.

The problem finds its origins in the vulnerability of undocumented workers: the undocumented worker is under constant threat of an identity check, which may lead to his expulsion from the country. Their financial situation is also extremely precarious. Language and education play a major role in the ability to obtain a legal status. As a result, the undocumented worker will not only have to accept illegal work because he lacks the official authorisation, but will also have to do 'undeclared' or underpaid work. So how can they obtain a legal status and be protected of some employers who, given their social and legal vulnerability, exploit them at will, violating their human rights?

²⁸ Rodier, Claire (25 octobre 2007), « Tribune ».

²⁹ Beaud, Stéphane, Confavreux, Joseph, Lindgaard Jade (dir.) (2006) *La France invisible*, p.7.

'My employers know that I have a fake ID. They don't care because they need us. Actually, they want us to be in this situation. In the recruitment agencies they will even only hire undocumented workers with fake IDs. And if you come with a real identity card, they won't hire you because, according to them, 'undocumented workers are of better use to us, because we can pay them as we like without the complaining.' They make money on the expense of undocumented workers, but those who are here legally don't benefit from it.'³⁰

In October 2006, undocumented people working in the 'Modeluxe' laundry went on strike, a movement initiated by the emblematic Raymond Cheveau, syndicalist of the CGT union. Then, on 29 May 2007, it was the turn of the cooks of the restaurant 'Buffalo Grill'. These first strikes were supported by the CGT and resulted in regularisations. From that moment onwards, a succession of strikes and protests, though not given the same attention in the Media, showed the need to give foreigners in France a new place in society was on everybody's mind. As this question of immigration became of increasing concern to the public, associations and individuals proposed, on 24 March 2007, via the movement 'United against a disposable immigration (Uni(e)s contre une immigration jetable, UCIJ)',³¹ a 'Joint Declaration for a new immigration policy.' It questions, among others, practices of 'useful' and selective immigration, negotiated in the interests of the countries of the European Union, who then host the worker for a specified period only. The person is not supposed to move permanently nor allowed to have his family follow and to be reunited with them. But the government's position, which is also influenced by upcoming elections, is to avoid mass regularisations because 'the term 'mass' is scary,' says Violaine Carrère. 'It is important to show regularisations do not happen 'en masse', but case-by-case, and according to the place the economy has for these immigrants.' In fact, as long as undocumented people workers 'are involved in the country's economic activity but do not disturb.'³² 'In short, it seems as if we want immigration without immigrants, as if we want the immigrated labor force, but not the immigrant worker.'³³

In the fall of 2007, the working group 'undocumented people ... but workers!' (which started in June 2007, following the initiative of the collective of public associations, UCIJ), developed a document for undocumented people, summarising their rights as workers. The document, also known as 'the 4 pages', was a result of the collective work between members of associations, trade unionists and undocumented people themselves, and calls upon the undocumented people directly: 'if you work, (...) you have rights and can defend them,' or, 'even if you do not have papers or do not have a work permit, the owner must abide by ALL labor laws that protect ALL

³⁰ Interview with Sacko.

³¹ <http://www.contreimmigrationjetable.org/>

³² Beaud, Stéphane, Confavreux, Joseph, Lindgaard Jade (dir.) (2006) *La France invisible*, p.142.

³³ *Ibid.*, p. 442.

employees. ‘

The year 2008 saw the outbreak of new strikes in major Parisian restaurants (‘Café de la Jatte’, ‘Chez Papa’, ‘La grande armée’, ‘La tour d’argent’) and the controversial occupation of the Labor Exchange. This series of strikes, better coordinated this time, benefited from wide public attention and active support of the CGT and Droit devant! (‘Rights first’), later followed by other organisations (League of Human Rights, Autre Monde, GISTI, RESF, CIMADE, MRAP, etc.), unions (Solidaires, CNT) as well as by collectives of undocumented people. Under the slogan ‘We work here, we live here, we stay here! (‘On bosse ici, on vit ici, on reste ici!’)’, undocumented people claimed their status as workers and as such seek recognition of their rights and equal treatment with other workers, particularly in their workplaces. It is no longer undocumented people striking, but workers, and about taking up work places as such. It is about asserting one’s rights, about achieving regularisation through struggle and perseverance. The argument relies on the application of improved criteria, simplified and valid throughout the territory. And their main weapon is ‘striking’. ‘The strike is a constitutional right, it protects the ‘undocumented’ worker, forcing the owner to meet its obligations. Because of this new balance of power the owner will have to fill out the appropriate paperwork (the famous CERFA) to support the application of a regularisation of one or all of his employees, who truly were ‘modern slaves’ before.’

Associations such as RESF launched a campaign called ‘an undocumented youth is a stolen youth’, denouncing lives lived in fear of identity checks.

‘The image of undocumented workers has changed in the public opinion, because taking children to the detention center after school is not acceptable. The fact that families that people know are being questioned changes everything, it makes people wonder about the situation [referring to the so-called wave of regularisation of parents of school children in 2004]. (...) Once one has met people personally and heard their story, it changes a lot in the perception of them. It is difficult to move from a personal experience to a more general, more abstract and more political position, because we lack the means to do so. And given the fact that the Media are the only source of reflection, it’s hard to build a wider argument. But the struggle of undocumented workers has improved the image of foreigners in the public opinion,’ says Clotilde Maillard.

Since the fall of 2009, strikes have resumed on about fifty sites in France, during which unions and associations have grouped themselves in the ‘group of eleven’, calling for national criteria for regularisation instead of a case-by-case approach or ‘exceptional’ admissions. This moment marks the desire to harmonise the regularisation criteria. This harmonisation was asked for through circulars, which ultimately ended up stacked on top of each other, increasing the opacity of the criteria but not really improving the actual rights. Only by including them in the law would one really create these rights. Since 2007, continuous negotiations resulted in a variety of circulars, but also caused a lot of tension in the actual government. Indeed, because of the variety of jobs that were

affected, many of the situations ended up going nowhere. It increasingly became about putting pressure on the state instead of on the employer. Shedding light on these practices and bringing the situation to everybody's attention did not miss its effect and the Media coverage was at its height. That is when, according to Violaine Carrère, 'there was the recognition of the right to strike, the recognition by the courts of law that undocumented workers had the right to strike in the companies they worked at. The right to strike was not disputed, however, the right to occupation (of the companies, ed.) has been disputed very often, resulting in a lot of forced evacuations and evacuations based on court decisions.' Although undocumented workers have the same right to strike as other workers do, their leeway to exercise this fundamental right is much smaller. Their precarious and undocumented situation indeed poses obstacles that are hard to overcome, as effectively exercising their right to strike becomes a very dangerous situation.

After several months many mobilised workers, evoking their poor living and working conditions, were still awaiting regularisation. In October 2010, 500 undocumented people occupied the National Museum for the History of Immigration (CNHI) at the Porte Dorée in Paris, causing the institution to close its doors. In early December, the management and the strikers agreed that they would only partially occupy the premises to allow access for visitors to the museum. After the negotiations of the first days didn't result in much, the undocumented workers continued to sleep there, waiting, while the prefectures studied their records and sparsely issued residence permits. With the mobilisations the undocumented people wanted to be noticed in the public arena and, even though sometimes overexposed by Media coverage, show that 'one needs to resort to strong actions in order to be heard.'³⁴

How did these mobilisations help to change the status of undocumented people as well as the way they are seen by society? During the first wave in the spring of 2008, 'there was a period when the press reported on nothing else but these mobilisation. (...) It seemed that the whole of France all of a sudden discovered that illegal immigrants had a real identity, or a fake one for that matter, but were always working with a real contract, a pay slip, and contributing to social security, retirement schemes, etc.. (...) We managed to convince people that undocumented people, the same people who occupied churches, lived of nothing else but the RMI, our social-security benefits and the welfare state. The effectiveness of the discours was extraordinary,' Violaine Carrère tells us. 'The problem is that after a few regularisations, most people assumed that the issue was resolved.'

³⁴ Interview with Francine Blanche.

These struggles made use of powerful symbols (strikes, Media, places of occupation, etc.) in order to get the public opinion to support this cause and the places of occupation (market of the Bastille, National Museum for the History of Immigration, etc.) were chosen according to their importance and visibility.

'We understand now how important it is that the first place of action (occupation) by undocumented people should be a symbolical place. For them it is important that these actors show their weakness and the injustice that is done to them, so they can benefit from the moral support they gain from the situation they are in.'³⁵

For these undocumented workers, the collective struggle, which they have themselves initiated, with strikes and the labor law as their main weapon, seem to be the only hope and possibility to obtain their citizenship. Through these practices the networks of employers convey an image of workers that can be exploited at will and are a cheap labor force that are easy to get a hold off – or to get rid off. When it comes to hiring undocumented labour force, 'employers always say they have no choice, and in fact, from an objective point of view, it's true, they are themselves caught in a deadly industrialisation race. (...) It goes against my own principles, but we must indeed see the things in their context, which currently seems to be a situation of capital valorisation,' says Alain Morice, but under what conditions? If we had not called for external labor force in the years 1960-1970, we would have lacked the manpower. From the perspective of the associations, 'no social benefits are final', says Alain Morice, as there are still tensions between the economic necessity, the economic utilitarianism and the law that needs to evolve. At Cimade people wonder, albeit a bit pessimistically, if it is actually possible to have no more undeclared work at some point in the future, considering the fact that our economy seems to rely on this kind of work. 'Unfortunately, I think everyone is aware of this problem, but makes do with it, including those who actually have the legal capacity to stop this. It is unacceptable that we accept this situation, because 'we would not have an economy that is doing as well if we would respect the law'.³⁶ But would the economy not have a more solid foundation if it would not be partially based on such precarious workers? Etienne Balibar confirms that 'one of the conditions for capitalism to thrive is precisely to destroy these fixed and inflexible legal constructions as much as possible.'³⁷

Like many other countries around the world, France prefers to ignore certain sectors that employ undocumented immigrants because, aside from their illegal presence, they keep certain parts of the country's economy afloat. 'By refusing to grant them residence permits, states determine the fate of the migrant,' assigning them to

³⁵ Blin, Thierry (2008/2) « L'invention des sans-papiers. Récit d'une dramaturgie politique ».

³⁶ Interview with Annette Horaus.

³⁷ <http://www.telarama.fr/idees/etienne-balibar-la-condition-d-etranger-se-definit-moins-par-le-passeport-que-par-le-statut-precaire,67997.php>

certain positions and consequently determining their working conditions. Rather than becoming part of society, undocumented people are asked to become part of the production system.

However, as mentioned before, the mobilisations have helped to change the image the French population had of this particular population group. We no longer think they take away the work of the French, but rather that they contribute to the economic development of France, while even paying taxes. The fight against discrimination of undocumented workers is at the heart of CGT's concerns. As a matter of fact, Francine Blanche, 'national coordinator on issues regarding social rights for all and the fight against discrimination' works closely with Halde. According to her, 'the situation of migrant workers in this country, in which the undocumented workers seem to be employees without any rights in their companies' shows that these protests are an important element in the bigger fight against discrimination. For Francine Blanche, the fact that determines in how far the CGT will get involved in the debate on undocumented workers is 'whether they are foreigners or employees in the first place? This is a very important point in this matter.' Trade unions wonder if 'the trade unions and the French society accept that there is a whole (hidden) layer of employees who have no rights, but prove to be an important safety margin for companies when it comes to layoffs or showing flexibility?' For unions, it is important to ensure that 'migrants don't belong to another category except that of paid staff: they should fall under labor law and not fall under the responsibility of the prefectures.'

Unions such as the CGT with the FSU, the Trade Union and CFDT have especially reacted when the movements of undocumented people were about work issues and, following the 'Sarkozy' and 'Hortefeux' laws, on regularisation: in other words, when it was time to put pressure on the employer. Leadership issues that have persisted between associations and unions are also reflected in another, more symbolic, discussion: who represents the undocumented workers and who speaks for the undocumented people (e.g. as part of a delegation to the Ministry, etc.)?

b) 'Invisible France'

This expression is also the title of a book, which was published in 2006. The book is a joint publication by sociologists, historians, lawyers and journalists, pointing out the importance of taking into account a particular imposing and tragic social phenomenon: social invisibility.³⁸ Right from the beginning, we saw that the most important issue was the visibility of these workers, which is why the actions and movements, as a way to

³⁸ A term that is used by Axel Honneth when talking about the fight for recognition.

raise visibility, were aimed at denouncing both the policies on working conditions but also on the lives of these workers. The Media occasionally helped to make the French population aware of the hidden lives of the undocumented people, as they were often employed in a position that kept them from being noticed, like for example working in the kitchen in the back of restaurants, on construction sites, doing night shifts, or even working in the street. On the one hand, invisibility becomes 'a state of self-denial and living in defiance of the position of social dominance that they are in'. On the other hand, it manifests itself through 'a protest movement that was triggered by a feeling of not being taken into account.'³⁹ It is remarkable that the Media, and suddenly also the politicians - under pressure from the trade unions and syndicates - only started to pay attention to the workers when these started to go on strike and started to organize themselves as a group, so they could confront their employers together. It seems that being visible is a requirement to be recognized by fellow citizens. Being invisible is not only about being deprived of a power to express oneself and act, but also about being socially vulnerable. The quest for recognition is a search of moral and social development.

'The struggle for recognition goes hand in hand with the desire to be visible, which in itself shows that the invisibility to which (undocumented people's, ed) lives are reduced is unfair. (...) To recognize somebody's life equals to giving him credit for it, giving it a value and thus making it visible. Conversely, an invisible life is unrecognized to such an extent, that it is basically saying someone's life is worthless and so does not count. (...) One can think of the opportunity to be recognized as being inherent to France's democratic motto: 'Liberty, Equality, Fraternity (Brotherhood)'.⁴⁰

More than only a reference to a social model, it's about a struggle for recognition by means of the law, which would not only allow to change the 'perception of injustice that has a negative effect on the social quality,'⁴¹ but also to change the living conditions of these workers. As a matter of fact, it is the law that protects the right of individuals to be recognised as human beings by the community. Denying this recognition is the same as taking away a life from the human community and making it invisible.

At least, that's what these stories tell us:

'When you're undocumented, you are nothing, you're not supposed to exist, to not be there. When I'm in the street, I feel like a drug dealer. I look everywhere to see if there are cops around, as if I have anything to hide. In fact, apart from the police, it is the State that ignores you most, except when it suits them.'⁴²

'I feel as if I am living in the dark.'⁴³

'If you are working with fake documents, it means that you are scared all the time, that you could be controlled or arrested anytime. But working with a fake identity of another person? That has a completely different effect on you.'⁴⁴

³⁹ Beaud, Stéphane, Confavreux, Joseph, Lindgaard Jade (dir.) (2006) *La France invisible*, p.13.

⁴⁰ Le Blanc, Guillaume (2009) *L'invisibilité sociale*, pp.95-96.

⁴¹ *Ibid.*, p.97.

⁴² Beaud, Stéphane, Confavreux, Joseph, Lindgaard Jade (dir.) (2006) *La France invisible*, p.145.

⁴³ *Ibid.*, p.151.

⁴⁴ Interview with Violaine Carrère.

'When I leave in the morning, I could be controlled by the police at any time. If there is police at the construction site, I'm always scared because I know that I will be arrested if they would control me. And when I leave work, I'm also terrified. It is even worse that my work is not recognized, so if I would have an accident, I have no social security; I can't go anywhere – even though I am paying my contribution like everyone else. I'm tired of this situation; I would like my work to be recognized by everyone. The only solution is to have the necessary documents and that's why I am fighting to get them. (...) If I would have these documents, I could enroll in an education and get on with life, just like everyone else; it would open doors for me.'⁴⁵

4. Obtaining a residence permit: arbitrariness and discrimination of prefectures.⁴⁶

Law by definition relies on the respect for its application and the prefect is responsible for this just implementation. But since 2003, successive reforms of the immigration law have abolished legal rules and have replaced them with measures that allow discretionary or humanitarian regularisation in which only the prefect has all decision power. At the same time, following the introduction of conditions for the integration of foreigners into the French society, we can see a generalisation of the use of fuzzy and subjective criteria. The criteria that are used when investigating a (regularisation) case are so un-transparent, that a whole new waiver of justifications for dismissal of regularisation applications is created, allowing the administration to not have to justify their decisions. So when there is a dispute between the government and a foreigner, his chances to challenge the decision are very limited: the legislative framework has become so shifty, that it has become much more difficult to recur on the law. In addition, since the reform that established the obligation to leave French territory, the rules for bringing cases to the court are more stringent, while the procedures that protect foreigners and mediating bodies are virtually nonexistent.

So through which practices were prefectures able to maintain this legal vagueness when it comes to the application of immigration law?

The institutionalisation of the prefect's discretionary power inevitably reinforces the arbitrary and unfair practices. It manifests itself by the gradual substitution of cases in which the residence permit was obtained '*ipso jure* (as of right)' by measures that grant an 'exceptional admission to stay' or also by humanitarian regularisations. The generalisation of discretionary measures of regularisation comes at the cost of the law and allows the development of arbitrary and unfair practices. That is why it is important to ask in how far the law is the result of social interpretation, and to highlight the discriminatory treatment of foreigners who have become the targets of abuse by the administration. As victims have inevitably added a certain 'legitimacy' to what they have

⁴⁵ Interview with S.

⁴⁶ See: Spire, Alexis (2005) *Etrangers à la carte. L'administration de l'immigration en France (1945-1975)*.

suffered, they are often inhibited about challenging a decision, which in turn makes discrimination against them more complex to detect.

The prefecture is the mandatory administrative gateway through which any foreign national, who wishes to remain in France legally, has to go. The answer to requests for a residence permit or its renewal is the responsibility of the prefect, the only one in his department that has the right to authorize or deny residence on French territory. The prefecture consists of different services and the one that is in charge of processing all the applications from foreigners can be seen as best symbolizing all the failures of the administration: it is here where immigration problems are particularly visible. The prefecture's immigration service is the department that receives the greatest number of people per day, and is also the department where the working conditions are maybe most questionable. The work of this service is rather 'sensitive' because it is the place where, among other things, immigration policies materialize and the pressure of quotas is felt when accepting or rejecting the issuance of residence permits. The fact that 'the foreigner' is assigned a separate space and specific laws make him a particular user. Given the fact that these individuals are categorized according to specific statutes, the question arises if the differentiation between the right of nationals and that of foreigners allows us to treat these groups differently?

Immigration law is constantly modified by decrees and circulars, which are added to the laws already in place, rendering immigration law increasingly complex, untransparent and subject to exceptions that are now randomly incorporated into legal rules. These tensions manifest themselves in the difficulties of applying the CESEDA; the structural issues in its turn manifest themselves in the policies that talk about the question of immigration primarily as a socio-economic, now even a structural, problem. Since 2003, successive reforms of the immigration law abolished legal rules and replaced them with measures that allow discretionary regularisation or regularisation based on humanitarian grounds, in which the prefect has complete power of decision. By means of the law of 26 November 2003 ('Sarkozy 1') and then by that of 24 July 2006 ('Sarkozy 2'), the legislator removed the possibility to grant a residence permit 'ipso jure' for foreigners with strong family ties in France. The obligation for the administration to ensure a solid administrative position for these people was replaced by a mere possibility of being granted this position, based on a decision that is left entirely to the discretion of the prefect. This change resulted in a decrease in the issuance of resident cards, while the applicants are being kept in a precarious position. In addition, the creation of the 'exceptional admission to stay' in July 2006 is probably the single most telling example of a system in which the regularisation is no longer conceived as a right but as a favor. Thus, by giving the administration a lot of flexibility

in defining legal regularisation criteria, the government supported the establishment of a law that is different for everybody.

In the meanwhile, the government introduced additional criteria for integration, which is considered to go hand in hand with the assimilation of 'Republican values', a notion as subjective as it is abstract. It basically means that the administration will evaluate the 'integration of the foreigner in French society.' An 'undocumented person' thus needs to be integrated in order to be regularised, even though we know that residing in the country illegally is the principal obstacle to inclusion. The lack of a residence permit puts 'undocumented people' in an extremely difficult position vis-à-vis the host society. The fact that they do not have any rights often forces them to break the law or to hide their situation to live 'normally' and even more so to fit in. Without the right to work, they will use fake residence permits to be able to find a job, as we mentioned earlier. The same goes for opening a bank account, which is very difficult when one is residing in a country illegally, or even enrolling in a French course, which is usually reserved for foreigners with a residence permit. When it comes to housing, what owner would be willing to rent his apartment to a person who has no papers? The difficulty is thus not only to integrate into society, but also to show that you are integrated. So, even though many 'undocumented people' are objectively integrated into French society, they were often only able to do so by bending the law, which the administration in turn can use to reject their regularisation. A dilemma arises: should one provide proof of being integrated, taking the risk of informing the prefecture you have been using a false residence permit. Or should one keep silent, taking the risk of exposing somebody to the chance of being rejected because of the lack of integration into society?

Finally, considerations prevailing at the trial of a case are so un-transparent that a new waiver of justifications for decisions were created, allowing the administration to not have to justify their choices. So when a dispute between the government and a foreigner arises, the foreigner's chances to challenge the decision are very limited: the legislative framework has become so shifty, that it has become much more difficult to fall back on the law. In addition, since the reform that established the obligation to leave the French territory (Obligation à Quitter le Territoire Français, 'OQTF'), the rules for bringing cases to court are more stringent, while the procedures that protect foreigners or mediation bodies are virtually nonexistent. Restricting access to certain information and certain procedures and the denial of certain rights contribute to the social inferiority and discrimination of this group.

The administrative step, the confrontation with French bureaucracy, is usually a painful moment for everybody. For foreigners, the test is even more laborious because

they may not know the French administrative system and generally do not speak French. The agents of the prefecture may also attempt to discourage people from applying for a residence permit or renewing it. In the end, some end up being ashamed to ask the agents anything, feeling that they are disturbing them, that they are bothering the agents, even that they have no business being there. Discrimination is not always explicit, it can manifest itself through judgments that are spoken out loud, certain ways of doing things, (not) respecting people, showing them they shouldn't be here or even that the prefecture is doing them a favor by dedicating a special service to them; it makes them feel they could very well do without them. Such abuse or signs of indifference to their particular condition push the foreigners in a corner, triggering them to rebel or react to it.

We can not say that the prefecture is very welcoming. They show no consideration. It is as if we are transparent. They are never relaxed or understand our situation. There are too many people so they are always in a hurry and try to make us understand that we bother or even embarrass them. So, you have to really make a scene in order to be heard, but in our situation that's risky and they take advantage of that.⁴⁷

A review of the conditions of the reception of foreigners, of the quality of public information and the examination of the records show mistakes, which, by their geographical extent and repetition, cannot be considered local or casual. The obstacles that are being put in the way of foreigners are part of an immigration policy that aims to reduce migration flow: discourage people already present in France and send a strong signal to potential migrants.

In addition, the agent who receives these people at his desk all day settles into a routine. Because of this continuous flow of foreigners, even though many of them have very difficult, moving life stories, agents no longer take into account every individual person's situation.

They tried to keep me from applying for citizenship at the prefecture: they demanded my passport even though I had fled my country. I got yelled at, was intimidated and talked to in a denigrating way. I refused to leave, so they ended up giving me the OFPRA⁴⁸ form after all, throwing it at me contemptuously⁴⁹

The prefect should guarantee that the agent respects the law and as such looks at the situation of every foreigner from a legal basis. Discrimination at the administration is particularly well hidden, because it consists of a mixture of the interpersonal

⁴⁷ Testimony of a student from Cape Verde at the prefecture of Toulouse, in « *Devant la loi* ». *Rapport d'observation sur les conditions d'accueil des étrangers dans les préfetures, l'information du public et l'instruction des dossiers (mai 2008)*.

⁴⁸ French office for the protection of refugees and stateless people (Office Français de Protection des Réfugiés et des Apatrides, OFPRA).

⁴⁹ Testimony of an asylum seeker at the prefecture of Toulouse, in « *Devant la loi* ». *Rapport d'observation sur les conditions d'accueil des étrangers dans les préfetures, l'information du public et l'instruction des dossiers (mai 2008)*.

relationship in the office and the - more or less accurate - application of the law. The agents see the interview in the office as an inseparable element to processing a case and particularly as the one moment where it is possible to deviate from the, otherwise ever-present, law. As in all social relations, ethnicisation is the *modus operandi* from the beginning. The agent knows that almost all visitors (except those who are accompanying them) are foreigners, some of them possibly in the country illegally.

'In fact, I noticed they are trying to have coloured people at the asylum center. It must be to be in good conscience, to ignore the fact that they are indeed just being racist, to conceal and hide their racist personality. Coincidentally, we were the only two there, a black person, and me, of Algerian descent, while other posts were open as well. I think they really try to choose, to employ coloured staff so that no one can blame them. Well, it's a mix, there are also the 'native French' from time to time, but in that particular group there is always people from Africa, the Antilles or from Maghreb.'⁵⁰

And:

'Mr: (...) Excuse me, but since I'm in France, I found that in the administration, when you are a 'person of color', you are not allowed to speak. From a sociological point of view, this is very interesting.

(...) In fact, I think the agents of the prefecture do not know the law and that decisions are arbitrary, while what is at stake is very important! '

Mrs: '(...) I called the German consulate, I could openly say that my husband is an undocumented person without being treated like a criminal. I was listened to and I could discuss the situation openly without being judged. There is a real discrepancy with the French administration. In France, it's absurd, there is no real personal contact, you leave frustrated, tense, you feel abandoned and in the end you lose respect for the French state.'⁵¹

The power of the administration manifests itself most when it comes to the processing of records, because this is the moment in which the administration takes the right to deny some people the access to the procedure of regularisation by refusing to register their request. Foreigners also depend on the administration's willingness to treat their case within a reasonable timeframe, which is a critical issue for applicants, especially because the prefecture does not give them any proof that procedures are ongoing.

Submitting an application to the prefecture potentially results in the loss of your file, arbitrary decisions, in extremely long waiting times and possibly even in arrests at the counter. When a file is lost, it requires the reconstruction of the file, knowing that some original papers are virtually impossible to recover (in some countries, for example, there is no family book). As these delays in the processing of the files are enormous - foreigners sometimes wait for several years for a response - their lives are virtually put on hold and are even suspended, awaiting the decision of the prefecture whether or not they have the right to live and work in France. Finally, the arrests in the prefecture, not

⁵⁰Interview with Fazia, 12 December 2003, in Spire, Alexis (2007/4) « *L'asile au guichet. La dépolitisation du droit des étrangers par le travail bureaucratique* ».

⁵¹ Interview with a couple where the husband comes from Cameroon, staying in France illegally, and the wife is French-German, in « *Devant la loi* ». *Rapport d'observation sur les conditions d'accueil des étrangers dans les préfectures, l'information du public et l'instruction des dossiers* (mai 2008).

to mention those carried out in the street or at work, generate a climate of fear, causing some to abandon their attempts at being regularized. The increase of arrests at the counters at the immigration office is what particularly reflects the impunity that the administration and its agents benefit from, granted to them by a hierarchy that is obsessed with targets and numbers.

In the prefecture of Marseilles, an old man, summing up his situation, implicitly summarizes the ambiguous policy of France: 'We lost our health, working in factories, but at the (immigration) office they only talk about us badly.'

The prefectures' service of immigration particularly embodies the contradictions within CESEDA and the place that France gives to foreigners. Certain practices that are used by some agents are scandalous, yet common in the French administration. It is clear that human relationships play a key role in the examination of the records. Law sometimes appears to be nothing more than a facade to conceal the actual decisions that are made.

Aside from the behaviour or thoughts of some racist officers, discrimination is also maintained by loopholes in the law that pushes some prefects to discard legal rules on a purely arbitrary basis. Some institutional arrangements show the gap between texts and what actually happens and point out our own responsibilities.

'Here, as well as everywhere else, the law can only give what is asked for and no code can single-handedly save the abomination of a society that looks away when one of its member faces racist violence. 'The bottom line,' as recently pointed out Jean-Michel Belorgey, is that 'in the fight against discrimination, the society is either willing to act - or it is not.'⁵²

Conclusion

We analysed how the mobilisation of undocumented workers is inherently related to the issue of representation in public space and how the recruitment of undocumented immigrants on the labor market is part of an economic 'necessity' – in spite of its illegality. The concept of visibility is a major challenge to the collective action of undocumented workers.

Is a solution feasible? Comparing with the North American case through the example of the lawyer Jennifer Gordon, the political scientist Jim Cohen suggests the idea of conditioning the entry in the national territory with taking away someone's social rights, which does not seem to be the social form of the current government. As a matter of fact, establishing such a principle requires real political will. Moreover, these social rights affect only a limited part of the population (those without papers, but also

⁵² Calvès, Gwénaële (July 2005) « Pour ne pas détourner le regard ».

the poor, women, etc.), persisting in creating competing categories with no universal rights whatsoever. Is it all really about conceiving a more rational and coherent regulation of migration flows in the interests of employees - who are the most neglected group - and employers? The difficulty is that the management of these flows shows an exaggerated form of protectionism in terms of the national territory and the regional labour market, while some companies actually rely heavily on this workforce, which is so easy to use, and are entirely dependent upon this system. The capitalist structure, creating divisions between areas of law and lawlessness, keeps the old complementary system in place and continues to be subject to a balance of the powers of society.

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Interviews

- S. undocumented worker, works in construction, on strike at the CNHI, awaiting his regularisation.
- S., undocumented worker, works in construction, on strike at the CNHI, awaiting his regularisation.
- A.M., sociologist at the University of Paris 7.
- V.C., head of research at GISTI.
- A.H., coordinator at Cimade for activities related to access to the right of residence for foreigners
- B.S., lawyer at MRAP.
- T.L., employee of FO and former intern at MRAP.
- F.B., member of the board of directors at CGT.
- C.M., teacher, activist for RESF and Libertarian Alternative, syndicalist at Southern Education.

Round table organized at the University of Paris 8, attended by:

- V.C., head of research at GISTI.
- B.S. lawyer at MRAP.
- C.Z., associate professor of political science, University of Paris 8.
- J.C., associate professor of political science, University of Paris 8.
- D.B., associate professor of sociology, University of Paris 8.

Glossary of associations and unions

- GISTI = Groupe d'Information et de Soutien aux Immigrés. (*Group for information and support of immigrants*)
- Cimade = Association for the protection of the rights of foreigners.
- MRAP = Mouvement contre le Racisme et pour l'Amitié entre les Peuples. (*Movement against racism and for friendship among peoples*)
- RESF = Réseau Education Sans Frontières. (*Network of Education Without Borders*)
- ANAFE = Association Nationale d'Assistance aux Frontières pour les Etrangers. (*National association for border assistance for foreigners*)

- MIGREUROP = Network of 33 associations from 10 countries fighting against refugee camps and the policy of repatriation.
- Autre Monde = Youth Solidarity Association.
- Droits devants !! = Association to defend equal rights, against poverty and exclusion.
- LDH = Ligue des Droits de l'Homme. (*League of Human Rights*)
- AL = Alternative libertaire. (*Libertarian communist political organization*)
- CGT = Confédération Générale du Travail. (*General Labour Confederation*)
- FO = Force Ouvrière. (*Workers' Force*)
- Sud Education = Federation of the SUD associations for national education.
- CNT = Confédération Nationale du Travail. (*National work confederation*)
- FSU = Fédération Syndicale Unitaire. (*Unitary Trade Union Federation*)
- LDH = Ligue des Droits de l'Homme. (*League of Human Rights*)
- AL = Alternative libertaire. Political organization of libertarian communists.
- CFDT = Confédération Française Démocratique du Travail. (*French Democratic Confederation for Labour*)
- Union Syndicale = Union of several syndicates.