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RESEARCH ARTICLE

The criminalization of border solidarity and the Law as a double-edged weapon

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ABSTRACT: Criminalization of solidarity towards migrants at the external and internal borders of Europe is in full swing. It roots into the wider process of criminalisation of racialised foreigners and their mobility towards and within Europe, as well as into the increasing judicialization of direct activism and grassroots social movements on the ground of anti-terrorism. Law and society scholarship has grasped the complex relationship between legal institutions or tools and social movements, and how these latter can use Law as an offensive or defensive weapon to protect themselves and enhance their cause. Activists can also turn the weapon of Law against the State, when using repressive measures and trials as mediatic and political stages to launch general statements and denounce the State's inconsistency and law violations. Aiming at contributing to the understanding of the room and conditions to transform judicialization into a political weapon, the article investigates a peculiar case of criminalization of solidarity, namely the territorial bans issued by Italian police against "No Border" activists on the French-Italian border of Ventimiglia since 2015. It points out that, in spite of the annulment of the bans obtained by the defendants and their lawyers in court, the peculiar features of the repressive tool, of the social movement itself and of the context in which they occurred, strongly limited the possibility of a political reversal of judicialization. Crossing a legal opportunities framework with a legal consciousness perspective, the article also shows the plurality of activists' attitudes towards law and the effects of criminalization on activists' life paths.

KEYWORDS:

Border, Solidarity, Criminalization, Legal mobilization, Legal consciousness.

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1. Introduction

Following the illegalization of ‘undesirable’ post-colonial migrants (Palidda 1999), and echoing a wider dynamic of dissuading and judicializing social movements on the grounds of maintaining public order and protecting the State against terrorism (Chiaromonte and Senaldi 2015, Codaccioni 2021, Vegg Weis 2022), solidarity¹ towards illegalized migrants within or at the borders of Europe has been criminalised at different levels. Such measures include delegitimization in political and media discourse (Musarò and Parmiggiani 2018, Reggiardo 2019), judicialization of not-for-profit aid for irregular entry or stay within Europe (Sanchez 2017, Solidarity Watch 2021), administrative penalties and police repression pertaining to laws not directly related to migration, such as preventing food distribution, eviction from informal shelters, etc. (della Porta and Steinhilper 2021). Alongside reports and statements issued by civil society organizations and institutions, a breadth of social and legal literature has emerged on this criminalization of solidarity² (Carrera *et al.* 2019, Du Jardin 2022). Research in the social sciences has mainly focused on how citizens and activists justify compliance with or disobedience of laws restricting solidarity (Lendaro 2018, Vergnano 2020), providing impetus to the theoretical reflections on civil disobedience (Bedeau 1961, Pali 2023). Scholars have also begun to more directly address trials and judicialization as lived experiences, analyzing the practices and discourse of defendants, both in and outside of courts (Lendaro 2018, 2021, Kolankiewicz and Sager 2021). However, and particularly when compared to other social movements facing criminalization (Doherty and Hayes 2015, Spiegel 2021) the potential for activists to turn their own trials into occasions to serve the cause of solidarity and equal mobility rights remains an under-studied topic.³

The article aims at filling this gap by looking at the conditions under which activists may turn their repressive procedures into legal and political weapons. Without presuming that criminalization always has to be politically diverted by activists, nor that this happens usually, the article draws on a case study in which legal instruments were used by activists to overcome repression, but did not provide occasions to advance their cause. The article also explores the effects of criminalization, at both collective and individual levels, to further the understanding of the complex relationship between law and social movements.

The specific repressive tool studied herein is the territorial ban (*foglio di via*) issued by Italian police against ‘No Border’ activists⁴ at the French-Italian border of Ventimiglia⁵ in the aftermath of the 2015 ‘summer of migrations’.

¹ Acknowledging the debate over this notion (Tazzioli and Walters 2019), here ‘solidarity’ is referred to as the social space constituted by all actors involved in helping illegalized migrants and/or denouncing migration policies at the border, as well as their actions and interactions. It is characterized by a prevalence of direct social actions, like sheltering, delivering food, providing logistical support or legal advice, ‘not primarily (...) claiming something from the State (...) (rather) directly transforming some specific aspects of society by means of the very action itself’ (Bosi and Zamponi 2015: 369). Solidarity is analyzed here as a ‘social movement’, notwithstanding the debate surrounding this category (della Porta 2020), intended as a specific social space (Mathieu 2012).

² This expression refers to the media, political and judicial actions attempting to hamper aid towards illegalized migrants, while labeling it as unlawful. The notion, encompassing what is also called ‘policing humanitarianism’ (Carrera *et al.* 2019), was first used by field actors themselves in the bid to establish public discourse on the topic, then borrowed by scholars (Fekete 2018, du Jardin 2022).

³ An exception to this is the work of Solidarity Watch (2021), presented later herein.

⁴ The label is a co-production of external actors such as the media, authorities and research (Walters 2006), and activists themselves (Trucco 2016).

⁵ An Italian town with around 25 thousand inhabitants, located at the border with the French Riviera and the French Roya Valley.

Theoretically, the article draws on ‘law and social movements’ studies (McCann 1994, 2021) and combines a more objective and global approach in terms of legal and judicial opportunities (Hilson 2002, Doherty and Hayes 2012) in which the specific qualities of the case studied are taken into account, with a more subjective perspective on activists’ legal consciousness (Ewick and Silbey 1998) and relations to the law.

Methodologically, the article builds on qualitative research comprising content analysis of a corpus of documents⁶ and in-depth interviews.⁷

The article proceeds as follows: after presenting the theoretical framework (2) and case study (3), findings are exposed and discussed in two parts: the first part (4.1) sets out the conditions preventing activists and their lawyers to turn repressive measures and trials into political or publicized weapons; the second part (4.2) focuses on the effects of the judicialization experienced, as it shapes the activists’ life trajectories, modes of action and relations to the law.

2. Theoretical framework

Research ‘on the many ways that law constrains, shapes, and provides resources for struggles by social movements’ (McCann 2021) has developed to the extent that ‘law and social movements’ can now be considered an established academic field (Cummings 2017). The majority of studies investigating the relationship between law and social movements are analyses of legal mobilization, questioning the potential of the law to enhance the cause of social movements, and the limits thereof (McCann 1994, Israël 2009). Scholars have extensively illustrated how social movements can mobilize the law in three main ways: as an offensive weapon, in the form of cause lawyering and strategic litigation to move the lines of the law and rally public opinion to a cause; as a defensive weapon, when facing repression; or by turning the weapon of law against the State, using their own repressive trials as scenes and battlegrounds for political claims, when not deliberately provoking them. ‘What is at stake’ as highlighted by Doherty and Heyes in their comparative analysis of environmental movement uses of criminal trials ‘is the symbolic meaning of acts, their definition as criminal or lawful’ (2015: 42). They consider that defendants will aim to broaden the focus of the action from its narrowly legal framework to its political character and thus engage the moral agency of the court (id: 43). To divert (Abel 1998) or weaponize (Turk 1976) a repressive trial, several conditions must be met regarding legal technicalities, the activists’ profiles and the context in which specific movements operate. In Doherty and Heyes’ perspective, strategies deployed by activists when facing repressive judicialization vary more in terms of the type of court and trial they face, rather than individual moral or ideological considerations (2012). Developing from this observation, these authors introduced the notion of ‘judicial opportunity structures’ (id.) along the lines of ‘legal opportunity structures’, which describes ‘both the stable and contingent factors that influence whether social movements are able and willing to pursue their goals through courts’ (Vanhala 2012: 527, Hilson 2002, Andersen 2005). Focusing on the trials undertaken against solidarity on the French side of the Ventimiglia border area, Solidarity Watch (2021) and Lendaro (2021) point to the role played by the strategies and advice given by legal professionals, together with, but ultimately prevailing over,

⁶ Including court decisions, police reports, defense memoirs, press releases, articles from local and national press. Respondents provided a dozen individual anonymized judicial files.

⁷ Interviews with five defendants, two lawyers and two local journalists. All interviews but one were conducted remotely (telephone and Zoom) for two main reasons: the variety of respondents’ locations, and the ongoing Covid-19 restrictions between fall 2020 and spring 2021 when most interviews were conducted. All interviews were recorded with respondents’ permission, under the condition of anonymity. All names have been replaced by pseudonyms.

the defendant's own values and activist profile. Their analysis shows the importance of defining and naming a specific category of repressive trials, here coined 'crimes of solidarity' (*délits de solidarité*), to both de-individualize trials and distinguish them from procedures against activists related to other causes. Finally, their analysis underlines the importance of anchoring the individual procedure in a wider, particularly national, support network. By opening a dialogue with the literature focusing on other cases of criminalized solidarity, more particularly those covering the French side of the Ventimiglia border area, this article follows Doherty and Heyes' recommendation to further investigate 'how prosecution affects mobilization and how, comparatively, different systems affect similar mobilizations' (2012: 23).

This article also builds on the notion of legal consciousness, considered as how social actors represent and interact with legality as a social structure existing in everyday life (Ewick and Silbey 1998). Developed in the context of US studies on law and society, the notion has been progressively adapted to other contexts (Cowan 2004, Israël and Péliisse 2004) with the aim of shifting from 'tracking the causal and instrumental relationship between law *and* society toward tracing the presence of law *in* society' (id: 35). Scholars have applied and validated the triptical typology proposed by Ewick and Silbey – 'before the law', 'with the law', 'against the law' – and sometimes integrated it with new categories – 'under the law', for instance (Fritzvold 2009). Most studies on legal consciousness concern the (non) take-up of rights in specific fields such as welfare (Sarat 1990, Cowan 2004), anti-discrimination law (Bumiller 1987) or work (Péliisse 2003). In social movement studies, legal consciousness has sometimes been used to understand activists' motivations and narratives (Fritzvold 2009), but rarely to understand criminalization and its effects on social movements.

3. Case study

Since the summer of 2015, the border area of Ventimiglia has become a hotspot on the European map of crimmigration⁸, concentrating border crossings and checks, and spectacularization of both (Trucco 2019, Amigoni *et al.* 2021). Here, the multilevel governance of what is framed as 'transit' migration has combined confinement and displacement with the aim of reducing the visible presence of illegalized migrants in the urban space, whilst feeding a continuous narrative of 'emergency' and exception (Trucco 2018, 2022, Tazzioli 2020). At the same time, a space of solidarity has developed, encompassing more formalized and professionalized actors, generally cooperating with institutions at different scales or calling for their action, alongside less formalized and loosely connected webs of citizens and activists (Trucco 2021). Helpers ascribed to this second area, labelled or self-designated 'No borders' activists, were depicted by media and authorities as damaging to the local social fabric, stigmatized as a source of disruption to the town's inhabitants and economy and accused of 'magnet effect', thus contributing to the arrival and lingering of illegalized migrants in the area (Reggiardo 2019, Trucco 2021). As in other cases of criminalized activism, police intervention and judicialization were preceded by a discursive distinction between 'good' and 'bad' activists, with the latter being portrayed as not having a direct connection to the territory, thus not being legitimate stakeholders (della Porta and Reiter 2003), as common criminals rather than political activists (Codaccioni 2021) or as representing an organized threat to the State (Chiaramonte and Senaldi 2015).⁹

⁸The convergence of crime prevention, border control schemes and immigration law enforcement leading to the illegalization of whole categories of individuals. For a recent discussion of the notion see Brandariz 2021.

⁹ Several examples can be found in the local and national press. See for instance: <https://www.lastampa.it/cronaca/2016/08/10/news/armi-e-cortei-ecco-l-internazionale-no-borders-1.34818483/>

Compared to other border areas, including the French side of this same border region, criminalization targeted the visible presence of activists in Ventimiglia public space more than their facilitation of irregular entry or stay in the European space.¹⁰ Several methods were deployed: evictions of informal camps and shelters, reinforced checks, police custody, arrests, denunciations for deterioration and other common law offences, and temporary territorial prohibitions which are the object of the present case study.

Foglio di via obbligatorio (hereafter *fvo*) is a preventive police measure regarding the removal and ban of a person from the territory of one or more municipalities. It includes two constitutive orders: the order to leave the municipal territory on which it was issued and return within one day to the defendant's permanent address as recorded in the Italian public register; and the order not to return to the territory from which the defendant was expelled for a certain period of time defined by the measure, with a maximum duration of three years. Violation of either of these measures is a criminal offence, punishable by one to six months in prison.¹¹

This law is rooted in a long history of territorial prohibition practiced throughout successive Italian liberal, fascist and republican regimes.¹² Its aim is not to define or punish offences, but rather to prevent them, mainly targeting mafia-related and other associative crimes. It can be issued against three categories of persons, when found outside of their municipality of residence: someone considered as recurrently engaged in illegal trafficking; as steadily living on illegal revenue; as currently involved in offences which could be a threat against minors or against public health, security or peace. Application of the measure is based on a highly discretionary and pre-criminal assessment regarding the individual's 'public or social dangerousness'¹³, carried out by the police without the intervention of a judge.¹⁴ It nevertheless requires an appropriate justification: case law stresses that, although discretionary to a very high degree, such assessment by the police must be current and based on facts, not necessarily crimes. The assessment must also be based on the whole personality of the individual, their previous behavior, association with other dangerous individuals, criminal charges and any morally reprehensible behavior.¹⁵ *Fvo* can be challenged by addressing the prefect or administrative court of the jurisdiction concerned.

¹⁰ Some trials for aid to the illegal entry or stay in Europe were conducted on the Italian side, at the Imperia court, including a case, in February 2017, involving a French activist having transported a family across the border, communicated as 'the first trial for solidarity smuggling in Italy' (cf: <https://video.repubblica.it/edizione/genova/a-imperia-il-primo-processo-in-italia-a-un-passeur-solidale/268040/268444>). Nevertheless, compared to what happened on the French side of the border, less trials concerning people assisting illegal movement conducted in Italy were labelled as 'solidarity crimes' (Solidarity Watch 2021).

¹¹ Law Decree 159/2011, art. 2, art. 76.3

¹² The first provision for a territorial ban in Italy was included in the Pica law 'for the repression of banditry and the Camorra in the affected provinces' in 1863. Preventive measures were then gradually defined over the course of legislative reforms (notably the 1889 law on public safety) and integrated into the fascist police system in 1926 and in 1931. In 1956 the first republican law defining preventive police measures maintained the three main measures of 1931 were maintained: *ammonizione*, *foglio di via obbligatorio*, *confino*. The latter was renamed and reformed after being judged unconstitutionality, while the *fvo* remained unchanged, apart from a reduction of the maximum duration to three years and a narrower definition of the three categories to which the measure could apply, later confirmed by the 1988 and 2011 reform (law 327/88, law decree 159/2011). For a history of preventive measures in Italy see Lasalvia 2022; for an activist account over their use against social movements in Italy, see Capitano Acab 2013.

¹³ On the notion and its assessment in Italian law, see Mariani 2021, Lasalvia 2022.

¹⁴ *Fvo* is the only instrument in Italian law which, despite limiting freedom of movement, does not require judicial validation to be effective. Therefore, it is also the only legal instrument in which assessment of dangerousness is entirely delegated to the police commissioner (see Lasalvia 2022).

¹⁵ A review of previous law cases can be found in Tribunale Amministrativo Regionale per la Campania - Sezione Quinta n° 775/2018 (20/12/2018).

The total number of bans issued against activists at the border region of Ventimiglia is unknown. Activists and lawyers have been unable to discern an exhaustive, detailed and up-to-date figure, due to the weak ties between some of the defendants and to their geographic dispersion. Nevertheless, they estimate this number to be in the region of 80-100 bans. Most (more than sixty) were issued between summer 2015, the first six on August 10th, and summer 2016. Bans were generally issued over a 3-year period and spread from Ventimiglia to all municipalities of the border province of Imperia.¹⁶ Most were cancelled by the Regional Administrative Court following defendant appeals from February 2016, although not all were challenged.¹⁷ The State Council confirmed the annulment of the bans in 2017, after the Ministry of the Interior appealed to reaffirm their legitimacy.¹⁸ Complaints were also lodged by the Ventimiglia police for ban violations, most of which were cancelled following the administrative annulment of the bans.¹⁹

4. Findings and Discussion

4.1 Understanding the conditions to politically divert the weapon of law.

This section presents the reasons why bans and related trials were scarcely transformed into springboards to reframe acts of disobedience in the name of general principles of solidarity, equality, anti-racism and freedom of movement. It sets out four main elements. Firstly, the specificities of the legal instrument, designed to prevent rather than sanction acts; second, the absence of a collective and overt violation of the ban; third, the legal strategy adopted by activists and their lawyers to obtain annulments; and fourth, the non-reframing of judicialization in the media arena.

An ante delictum preventive measure

One of the main identified strategies to divert the weapon of law is to requalify and reframe an action, from a crime to an act of general interest, eventually supported by other sources of law. Activism for abortion or euthanasia rights are good examples of this reframing through criminal trials (Valenti 2010, Poncibo 2021). In the case analyzed by Kolankiewicz and Sager, the defendants responded to the accusation of having helped a boy to illegally cross the border by affirming that they only accompanied an autonomous movement in the name of freedom of press (2021). In his trial, Cedric Herrou²⁰ claimed that his actions were law-abiding and even law-enforcing, since the State was failing to observe its international and national engagements on asylum and protection of minors (Lendaro 2021, Solidarity Watch 2021). Regarding the ban, this requalification is

¹⁶ The first bans issued only mentioned Ventimiglia, whereas bans issued between summer 2016 and 2017 cited twenty different municipalities, including the provincial capital Imperia.

¹⁷ Tribunale Amministrativo Regionale per la Liguria - Sezione Prima, n° 202/2016 (24/02/2016), n° 941/2016 (19/09/2016), n° 615/2016 (19/09/2016), n° 605/2017 (13/07/2017), n° 35/2019 (04/02/2019), and others.

¹⁸ Consiglio di Stato, n° 4742 (12/10/2017).

¹⁹ According to the documentation collected, at least seven violations were filed, leading to four convictions with detention in the first degree (two for one month, two for three months), among which at least one was upheld; Tribunale di Imperia - Sezione Penale, n° 716/2019 (04/06/2019); n° 1311/2019 (13/11/2019).

²⁰ French farmer Cédric Herrou was first convicted in 2017 by the lower criminal court of Nice for facilitating the irregular circulation, stay and entry of refugees and migrants in the Roya Valley, on the French-Italian border. His case engendered a change in French law, following a review by the Constitutional Council of the offence of facilitation and a redefinition of the principle of fraternity in 2018 (Martínez 2021).

prevented by the fact that it does not sanction a specific action, but rather identifies individuals as potentially future criminals, thus referring to what Jakobs (1985) called the criminal law of the enemy: a future-focused law to neutralize threats, rather than a past-focused law reaffirming the validity of an established rule (Donini 2006: 62).

As grounds for dangerousness, most bans under review raised the following elements: ‘notorious activism among No Border organizations’, and reference to acts of deterioration and violence committed by members of these groups, not necessarily the person targeted. When pertinent, bans were also grounded on previous records of crime and on the carrying of dangerous objects such as pocketknives or gardening tools in the vehicles in which they were checked. For activists coming from other regions of the country, the absence of professional or family ties in the region of Ventimiglia was also cited. However, bans issued made no reference to specific political practices or acts of solidarity towards migrants, despite the fact that many checks and arrests leading to bans had occurred in the aftermath of demonstrations for freedom of movement or during direct social actions such as sheltering, delivering supplies, constructing dry toilets, etc. as reported in interviews. These actions identified activists as ‘No Borders’ in the eyes of the police but were not mentioned as justification for bans.

This specificity limited the possibility of framing offences as acts of border solidarity. The only way to legally address contested actions, and to obtain access to a symbolic stage upon which to redefine them, would have been to violate the ban and proceed to a criminal trial (Doherty and Hayes 2015). As developed in the following section, overtly violating the ban was not a generalized choice.

Variations in compliance

Among those targeted by the *fvo*, attitudes and strategies regarding compliance varied. Previous experiences with police and other legal authorities played an important role in explaining variations, together with the assessment of personal risks pertaining to previous criminal records and the individual’s professional or economic situation. People’s decisions also took into account legal opportunities and the knowledge defendants had of these. On a collective level, the opportunity to respect or violate bans was not particularly debated, acknowledging that every person’s situation could be different and activists may have different views. The transitory and informal organization of the group also explains the lack of consensus. On this subject, Matteo²¹ said:

(The position was) freedom of conscience: let everyone behave according to their own conscience. (...) Also because it wasn’t really a structured group, it was a movement created over the years by people who would come and go, which functioned under the guise of ‘no Soviet diktat’, so to speak, complete freedom to act. Sometimes we gave each other directions, but ultimately people did as they chose.

The reasons underpinning this individual choice were severalfold. The desire to continue helping illegalized migrants and the commitment or personal relationship established with them were weighed against the risks, both in terms of strictly legal risks and of broader social risks, both individual and collective. Matteo, self-

²¹ 36 y.o., self-employed craftsman, born and raised in the wider border region. Level of studies: high school. Involved in solidarity at the border since June 2015, no previous activism. Defendant in trials pertaining to the autonomous camp in 2015. *Fvo* issued in May 2016 and annulled after one year.

employed and not involved in other social movements, decided to overall respect the ban. When he did infringe it, it was because of the relationships he had forged with individuals and in an endeavor to avoid publicity.

No (I didn't stay despite the ban), even if in accordance with my principles I should have... but it was my more rational side that came out and as I have a small business that had already been compromised because everyone knew I'd received the ban,²² I tried to preserve it as much as possible (...) Well, the truth is I went back three times, moving like a ninja and only because I wanted to see some guys I was particularly connected to. It was really because they were writing to me 'listen there's something going on, we need you, can you come'. And I even think some police officers knew I was there for that. But I went there with genuine apprehension.

Giovanni²³, who came from another region and with a longer experience of activism, similarly explained this appraisal of risks, both at the individual judicial level and at a collective political level.

A certain number of us didn't stay. Not that they didn't want to, but they couldn't, because they came from movements for the right to housing in (names four cities in Italy) and they already had other trials for that (activism), and when they add up, then it's no longer just house arrest, it's prison! Also, they couldn't compromise the movements they came from.

For him, the challenge was to find a way to continue activities of helping and advocacy while avoiding police controls so as not to compromise the collective effort.

We said to ourselves 'let's be careful, because they can arrest us and keep us for hours at the police station, and that would be a waste of time for us and for comrades who then have to look after us'. We took turns, we helped each other, we checked there was no police car around, we were careful in using the cars... We didn't really reach a consensus, everyone honestly said 'ok, let's take the risk but remain vigilant'.

Marco²⁴ also remained in the region and actively engaged in solidarity, feeling that the ban was not such a heavy restriction, and deeming that it was quite easy to escape police controls.

For Anna²⁵, the desire to continue her activities with migrants combined with the desire not to back down in the face of repression she considered illegitimate. She thus made it a matter of principle and claimed she deliberately sought to be accused of non-compliance with the ban.

²² On the social stigma related to the *fvo* and its effects in limiting personal liberty beyond the sole freedom of movement, see Lasalvia, 2022.

²³ 50 y.o., former craftsman converted to farmer; born and raised in northern Italy, previous enrollment in movements for the right to housing. Level of studies: middle school. In the Ventimiglia region since 2015. Defendant in a trial related to a demonstration on the French side of the border in 2016. *Fvo* di via issued in November 2017 remained valid until November 2020.

²⁴ 32 y.o., former employee now self-employed in the entertainment industry, raised and resident in a major northern Italian city. Level of studies: high school. Defendant in trials pertaining to the autonomous camp in 2015. *Fvo* issued in August 2015, unchallenged. Accused of infringing the ban in 2016, trial ruled in 2019, sentenced to one month of house arrest in 2020.

²⁵ 26 y.o., unemployed, born and raised in a major Italian city, previous experience in the movement for the right to housing. Level of studies: high school. In the Ventimiglia area from 2016 to 2018. *Fvo* issued in May 2016 and annulled after one year. Defendant in a trial for aid to illegal entry or stay ruled in 2022 with full acquittance.

I personally violated it explicitly. I purposely continued to have my coffee (at the bar) in front of the police station because I knew I was right, I knew I would win (the appeal for annulment) and I wanted to create a precedent to encourage people to do the same and stop respecting unfair measures. (...) For me it was important in several respects, both to continue doing something concrete and on principle: I didn't do anything (wrong) and you can't tell me I have to leave without a reason just because you're in uniform.

Among those who did stay, the prevalent position was covert disobedience. Therefore, Anna's position earned her some criticism. The fact that an individual choice of overt disobedience did not gain collective support is another aspect clearly distinguishing this case from that of Cedric Herrou.²⁶

However, a defensive legal mobilization rapidly gained ground. While this strategy was generally effective in disarming the State, it echoed the State's logic of distinction between 'good' and 'bad' solidarity and thus humpered the politicization of trials, as analyzed below.

The judicial arena

Activists' judicial response to the bans was rapid, as a result of pre-established links with lawyers, or the already-initiated personal engagement of certain lawyers in the area (Trucco, 2016). Appealing to the legal authorities to request annulment of the bans was not unanimous but was a majority position, considered as the best way to continue or rapidly resume solidarity actions. As Anna explains below, there were both ideological²⁷ and pragmatic considerations, shaping the choice to appeal or not. Together with lawyers, cases were selected as being considered more urgent because of the ban's impact on the defendant, or as more likely to win.

There were more anarchist-oriented comrades who said that, on principle, they didn't recognize the authority of the State to give them a fvo and who therefore would not ask a judge for help. I believe only two went that way and kept their fvo. The rest of the debate was more technical, beginning with whether it was more practical to present collective or individual actions. And it quickly became an economic issue because most (of us) still lived with their parents,²⁸ the requests (for annulment) had to be paid in advance, and there wasn't enough money for everyone to appeal.

For Giovanni, requests for annulment had two main objectives: firstly, to address what was considered a police strategy for removing 'troublesome witnesses' of police border practices, and 'dislocating' a nascent social movement; secondly, to show the police that activists could have legal awareness.

²⁶ This is not to say that there was no criticism over Herrou's strategy within the French solidarity network, but it received significant overt support from other individuals and organizations.

²⁷ As stressed by Doherty and Hayes in cases of criminal trials 'for movements players faced with (this) power imbalance, the most fundamental decision is whether to recognize or reject the authority of the court' (2015: 40) which refers here to police authority and the administrative court.

²⁸ And therefore, could not benefit from free legal aid due to their income. In Italy, the public register also determines the household in which incomes and taxes are calculated.

Yes, (our response was) immediately to appeal. Because if they want to fight us, we must respond. We have to show we are aware of what a foglio di via is, aware of the fact that there are legal instruments that can stop them, show that no matter what, we're not giving up. (...) We aren't doing anything wrong, we haven't committed any attacks, nothing, simply helped people.

This legal awareness was very unevenly distributed among defendants, as observed by Marco, who nonetheless recognized the importance of displaying it, and the crucial role of lawyers.

*I didn't have the money and I didn't feel the need to (appeal), as we saw we could get around it quite easily... but in the end I paid a price for that. (...) Luckily the lawyers were there, attorney *** literally came to our rescue, she was there at 6 a.m. when we were released from police custody, I will always remember that. (...) Her presence changed the balance a little: as 30 of us named her as legal, police officers must have said 'oh wait, maybe they're not idiots'; which we were, actually (laughs)! But we also had this weapon to play with.*

The requests for annulment targeted two main formal elements. Firstly, that the facts advanced by the police to justify the ban were either false, imprecise, insufficient or out of date.²⁹ The factual basis of these elements as signs of current dangerousness was successfully challenged in annulment proceedings. Secondly, that the penalty issued was excessively restrictive with respect to legitimate individual interests, like access to the workplace, and citizens' fundamental freedoms such as movement, as it was acknowledged by the court.

The elements (do not) justify a prognostic judgement on the commission of crimes that offend or endanger public safety or peace. (...) The territorial scope of the preventive measure (...) contradicts with the principle of adequacy and proportionality.³⁰

On the substance, the claim of dangerousness was also challenged by providing elements demonstrating the defendant's social inclusion and general 'good behavior'. The arguments provided sought to invalidate the assessment of dangerousness by providing evidence of the defendant's presence at the border as part of a life trajectory characterized by voluntary commitment to others.

*In conclusion, it is also appropriate to stress that today's appellant, a university student, has no criminal record or pending charges. She reports having carried out various humanitarian activities in third world countries (sic), in collaboration with (name of an NGO) and with the missionaries***. The numerous testimonial statements produced by the appellant - see, for example, that of the representative of (name of an NGO operating in Ventimiglia) agree in the description of the volunteering activities she carried out, for example the distribution of food and blankets, resolving the critical situation of migrants in Ventimiglia (...). These elements (...) converge to define a subjective framework very distant from the paradigm of the socially dangerous subject.³¹*

²⁹ For instance, that the 'weapon' carried was actually a work tool unsuited to the offence, or that being found in the company of individuals with criminal records does not establish the dangerousness of a person.

³⁰ Tribunale Amministrativo Regionale per la Liguria - Sezione Prima, n° 941/2016 (19/09/2016).

³¹ Idem.

In addition to arguing the absence of criminal record, appeals also presented written testimonials from academics, humanitarian, non-profit and religious leaders having known the litigant in the past, or during their time in Ventimiglia. As Matteo recalls in the following excerpt:

Being one of the first (appeals) my case had to be well prepared. For the lawyer, the slightest element could be useful (...) I personally went as far as (name of an Italian town) to obtain the written testimony of my parish priest when I was a teenager, and who wrote that I had always been a person who helped others, demonstrated solidarity (...) I believe this testimony had a lot of weight and gave the judge a certain image of me, the true one, what I was, what I am.

This strategy confirms the importance, in activists' prosecutions, of 'witnesses (...) providing 'expert' testimony as scientific or moral authorities' (Doherty and Hayes 2015: 46).

The attention paid to the social profile and trajectory of the defendants reveals and accentuates the great diversity within the movement: level of education, for example, valued in the appeals for annulment was very unequal among the defendants. These inequalities intertwined with age, social class and gender dynamics, and intersected also with years of activism and the cumulative effect of engaging in various struggles, such as the right to housing. Paolo, a journalist in favor of the movement, summarized the issue as follows:

The idea of the lawyer was to say to the judge 'look, you are not dealing with a good-for-nothing, you are talking to a person who has a master's degree in political science, studied in a prestigious university, has done nonviolent things, isn't a hooligan, nor a troublemaker. Some used it as a defense but were embarrassed, because it was a defense which more 'hippie' activists with years of activism didn't have, and they felt privileged.

The legal strategy could thus echo the distinction established by the authorities and the media between non-violent 'good helpers' with ties to humanitarian organizations, among which faith-based organizations played a preeminent role, and provocative and counterproductive activists on the other, trying to ensure litigants were associated with the former. This necessary negotiation with the authorities' logics when portraying the defendants, and the discomfort felt by some, were further obstacles to the political diversion of the weapon of law.

The State's use of preventive crime laws attempted to portray a collective, and dangerous, 'No Border' political actor, as it was mentioned both in the text of the bans and in the Ministry of the Interior's appeal against one of the first annulments³². At the same time, activists' legal actions pushed for consideration of activists' individual profiles rather than of collective actions of solidarity. This contrasts with cases in which activists politicized criminal trials through strategies of collectivization, for instance by providing defendants with common and standardized answers to authorities (Codaccioni 2021, Doherty and Hayes 2015: 44).

Since the justice system is 'inherently individualistic' (Vanahala 2011: 12), de-individualizing judicial procedures is a concern shared by all movements wishing to politically weaponize the law (Agrikoliansky 2003, Israel 2009). Depersonalization and re-generalization of the court case is most often the scope of their communication strategy both in and outside court. The following section focuses on the media to explain the political (non) diversion of repression by activists.

³² Consiglio di Stato, n° 4742 (12/10/2017).

The media arena

The case analyzed by Kolankiewicz and Sager shows the importance of debate across the three arenas, the media, courts and activism, especially when the first can compensate for the limits inherent to the second: while defendants could seldom express their opinions on migration laws in court, trials gave them the occasion and legitimacy to extensively plead for human corridors in the media (2021). The case of Cédric Herrou and other *délinquants solidaires* at the French-Italian border further proved the importance of media coverage and communication strategies to sustain the positive outcomes of trials and expand their effects to engender legal and political change (Solidarity Watch 2021). Relations with the media can be crucial for activists' use of the law (Agrikoliansky 2003, Israël 2009). As publicity is an essential aspect of civil disobedience (Bedeau 1961), communication is vital to turn repressive trials into cause-enhancing levers. That said, visibility is a thorny issue for border solidarity: public denunciation must be weighed against the need to protect illegalized migrants, and a balance must be found to respect their autonomy and political subjectivity.

Two press releases were issued in the summer of 2015 concerning the first bans, one from the activists³³, and one from representatives regarding a parliamentary inquiry.³⁴ Neither was issued contextually to, or supported by, the judicial activist strategy. Outside of the networks and channels directly related to activists, and aside from a few articles signed by allied journalists, the territorial bans and trials were seldom publicized, and lacked a clear communication strategy. As Anna said in her interview, communicating politically over bans was simply impossible as there was nothing to claim responsibility for: '(activists) were accused of being dangerous but (they) weren't'. Besides, media coverage was not perceived necessary, since legal requests for annulment were considered 'easy to win'.

Two main factors also explained this feature: the national context and the movements' features. The comparison with what happened on the French side of the border is particularly contrasted and heuristic, as France and Italy offered different opportunity structures to criminalized helpers. In France, communication surrounding 'solidarity crimes' dated back to 2003 with the first *Manifesto of Solidarity Offenders*³⁵, and the inventory of legal cases dating back to 2009.³⁶ In 2016 and 2017, the French side of the French-Italian border became a laboratory of criminalized solidarity and the reframing thereof by activists, lawyers and media bodies. In Italy, the notion of solidarity crime developed later and with smaller resonance (Du Jardin 2022).

Other factors related to the features of the movement. Its informal organization, the heterogeneity of activist profiles and the absence of specific communication skills were crucial factors. Despite contact with journalists, the prevailing attitude among activists in the 2015-2017 period was one of distrust towards mainstream media. Besides, in the name of migrant autonomy and political subjectivity, activists were reluctant to speak out 'on their behalf'. As a journalist, Paolo criticized this lack of awareness:

The early activists used to say 'either they (the migrants) speak, or no one speaks', with the result that others spoke, badly, about activists. (...) It's a vicious circle: you insult journalists, you call them when you need them and you expect them to suddenly say good things about you, which is impossible.

³³ <https://www.infoaut.org/migranti/si-balla-a-ponte-san-luigi>

³⁴ https://www.redattosociale.it/article/notiziario/migranti_sel_a_ventimiglia_fogli_di_via_e_denunce_a_volontari_

³⁵ Later expanded in 2018 with the *Solidarity is not a Crime manifesto* and by publication of *A Guide to Solidarity Crime* in 2019.

³⁶ www.gisti.org/delits-de-solidarite

He also contrasted this attitude with the strategy of Cédric Herrou, recognizing his media success. In contrast, Matteo is critical of Cédric Herrou's media strategy, which he feels increased police attention to the region and therefore reduced the effective possibility of helping illegalized migrants. In a more balanced judgement, Anna considered that Cédric Herrou succeeded in finding an intermediary position between 'helping' and 'smashing the border' using all means available, including the law and media:

*Maybe he ended up helping fewer people than he could have if he hadn't publicized his actions, but he gave political meaning to the act of helping them.*³⁷

Thus, the lack of a strong communication strategy, together with the defensive use of the law to disarm a preventive repressive tool, contributed to the weak politicization of the bans and the trials surrounding them.

Deflecting attention from legal and media arenas, the following sections explore the impact of the judicialization experienced by activists on both collective and individual levels.

4.2 Understanding the effects of judicialization on solidarity and activists

Following McCann's invitation to observe the relationship between law and social movements beyond the times and places of justice (1994), this section aims to provide new elements to the understanding of political repression and the impact of judicialization on social movements (Codaccioni 2021, Solidarity Watch 2021).

At the collective level

As observed in previous studies (Trucco 2021, Trucco *et al.* 2023) and confirmed by the respondents of the present study, bans contributed to transform solidarity in practice: more discrete and less conflictual modes of actions were preferred from 2017 onwards, with a growing role of legal mobilization and decreasing number of actions using public space. Furthermore, bans had a role in decreasing and selecting activists, reducing the scope of the movement.³⁸ Most activists left the territory after receiving a ban. Among them were the more occasional and less experienced ones, sometimes banned after only hours or days spent in the border region. Conversely, the more experienced activists with multi-issue and geographically disseminated engagements were also more likely to be forced to leave after the ban. For them, the risks related to the bans were higher both individually, as they often had criminal records related to other actions, and collectively, as they sometimes had leading roles in other movements. Therefore, remaining activists were more aware of the possibility of repression for whom risks were lower, or perceived as such, and already quite integrated in the regional community. They were also more open to using the law as a defensive weapon and able to cooperate with more structured humanitarian actors (Trucco 2021). Wider dynamics concerning age, gender and level of

³⁷ Furthermore, while talking about the example of Cédric Herrou, Anna recalls that an Italian activist did the same during her trial in Nice (her case is also reported in Lendaro 2021).

³⁸ On dividing activists as an effect of criminalization, see Doherty and Hayes 2015.

education also played a part, with young educated female activists being more able to stay longer. For others, remaining in the region often required a whole life change.³⁹

Considering these two effects, bans and the associated trials contributed to a general depoliticization of border solidarity.⁴⁰ However, this result is strongly nuanced when shorter time units are taken into account. At the beginning, criminalization could increase publicity and conflict, and function as a call for action and support. In the aftermath of the very first territorial bans received in August 2015, activists issued a press release:

*We will continue to fight for the opening of all borders, we will continue to denounce the illegitimate deportations of migrants and the violence to which they are subjected, we will continue to support people on the move. Just as seas, deserts, and prisons do not stop migrants on their journeys, in the same way, a handful of investigations and administrative measures will certainly not stop No Border activists.*⁴¹

Nevertheless, the increasing number of bans ended up having a more dissuasive effect. As Marco recalls:

the first fvo contributed to share information publicly, to talk about the situation in Ventimiglia, at least in our environments, and this translated into huge participation in the camp in 2016, with many comrades from (names two big Italian cities), international comrades... and that was when fvo started pouring in, I think they issued some thirty fvo within two weeks, also to comrades who had never been there before, often with criminal records and therefore easily identified.

The duration of repression and quantity of measures issued are key factors in explaining that repression led to depoliticization. From another perspective, this general dynamic of depoliticization can be discussed considering defendants' perceptions, their experiences as activists and their relation to the law and litigation. This is the object of the next section.

At the individual level

For younger activists experiencing their first judicial repression, the ban shaped both their self-perception of activism, and their perception and conception of the law. The notion of legal consciousness is particularly useful to seize these transformations, as it encompasses representations and practices, and recognizes that how people interact with the law in everyday life can evolve over time and experience (Pélisse 2005).

Ewich and Silbey distinguished three main schemes: 'before the law', 'with the law', and 'against the law' (1998). 'Before the law' translates a representation of the law as separate, autonomous and impartial, essentially effective in resolving disputes between individuals who it considers equal. Within a 'with the law' consciousness, the law is seen as a game, or 'terrain for tactical encounters' (id: 28) in which the outcomes are not completely predictable and rather depend on mobilizing resources and strategies. 'Against the law' considers law as a commodity of power 'unable to effectively resolve disputes, recognize truth, or respond to injustice' (id: 196). Law is seen as an unbalanced and capricious product of power: 'Unwilling to stand before

³⁹ Giovanni for instance, coming from the construction industry in a big Italian city, turned to agriculture in a small village at the border.

⁴⁰ I refer here to an interactionist conception of politicization based on conflict and publicity (Hamidi 2006, Trucco 2021)

⁴¹ <https://www.infoaut.org/migranti/si-balla-a-ponte-san-luigi>

the law and unable to play with the law, people (...) talk about the ruses, tricks, and subterfuges they use to appropriate part of the law's power' (id: 28) or to try to keep it at distance (Pélisse 2005: 124). In his study among environmental activists, Fritzvold introduced a fourth scheme, 'under the law', in which 'the law (is) fundamentally illegitimate because it is created by and embedded in a social order that is fundamentally illegitimate' (Fritzvold 2009: 810). While some elements of this latter can be easily found in activists' words, 'against the law' consciousness is that which resonates more with their discourse and practices, whilst no elements of the 'before the law' scheme are detectable.

Focusing on three interviewees - Anna, Marco and Matteo - I argue that a shift from an 'against the law' consciousness to a 'with the law' one is observable as a result of the judicialization they experienced, although to different degrees and with some rooted persistent elements of the former stance.

Matteo's evolution demonstrates important changes in practices but within an overall persistent legal consciousness. When discussing his engagement with illegalized migrants, Matteo underlines how, for him, borders are unacceptable and racist legal constructions to be fought against. He refuses to accept that unfair laws limit mobility towards and within Europe and 'do(es) not care to know what (he) or the border patrol are legally allowed to do'. Also, when expressing criticism towards Cédric Herrou's strategy, he underlines how, for him, 'the priority is not to be right but to help'. However, when confronted with repression, Matteo rigorously prepared the case for annulling his ban, which was successful, and he was not charged with any violation. Although he did not hesitate to use litigation as a defensive instrument, he still perceives the law as a powerful uneven system overall lacking legitimacy and fairness. In order not to be harassed by it, he avoids patent activism and seems to prefer discretion and formal compliance in his everyday life.

Right now I try to be very respectful of the rules. I'm not saying I used to be a serial criminal, but I've always felt that many rules limit our freedom, and that when rules seem morally unjust it's fair to break them. For me, the most just law is your conscience. But I tell you sincerely, to safeguard my company, now I am very respectful, very careful not to step out of line. Sometimes I think it's against my nature, and sometimes I think it's a matter of survival.

For both Marco and Anna, the ban had important effects in consolidating and transforming their engagement. However, their judicial experiences diverged, as Anna filed for and obtained an annulment of the ban, while Marco did not appeal it and was convicted to house arrest for violating its terms.

At the beginning, Marco experienced the ban as if he was being challenged by the State, which led to an acknowledgement of his status as an activist.

when I came out of police custody, I was in a state of excitement, all my nerves were awake, it was as if the State was telling me 'you are doing this, for us you are a criminal' whereas, yes we are activists, but we were not tearing down the barricades of the G8⁴², we were helping people to do what they wanted to do, it wasn't a revolutionary camp, it was an active solidarity intervention like the NGOs at sea or the BSA⁴³ in central Italy. The fact of feeling that they were creating the conflict put us in another position, we had to make a choice: either you stay, in the role they gave you, or you leave. Probably I would not have stayed if I had not had the

⁴² Reference to the violently repressed demonstrations during the G8 summit in Genoa 2001.

⁴³ The BSA, Active Solidarity Brigades, were volunteer groups, also joined by Marco, operating assistance in the Italian regions struck by the earthquake in 2009.

fvo, it was a challenge (...). I didn't expect to be treated like a criminal, because I was not aware of the reality of migration politics as I am today.

Police repression made him reclass his activism as less humanitarian - the parallel with rescuing at sea or volunteering after an earthquake - and more oppositional - the image evoked by barricades. Also, repression contributed to hone his activism from general social engagement to migration and border politics. These findings are akin to those of Codaccioni on young communists in the 1950s: 'initially (...) repression promotes militant radicalization, attaches young people to the organization and contributes to the performance of a role, that of the revolutionary activist, (marked by) the radicalization of practices and discourses' (2013: 31).⁴⁴ However, after having being convicted for violation of the ban, and experiencing the consequences of the sentence on his private and professional life, Marco reflected on the limits of the activism he was engaged in: the image he had of himself as an activist, and of the struggle he was leading, contrasting with a lack of activist tools at his disposal, including legal instruments to respond to repression.

the fight we wanted to wage, we did not have the means with which to do so: the fact of not knowing how to manage a normal police reaction shows me the limits (...). Anyone who has gone through this experience retains the awareness that it is not a game, because when things get serious the State goes: 'hey, this is the State, you are nothing! This is Frontex, who are you, four anarchists?'. (...) we lacked legal instruments. The fvo were full of formal errors (...) if we concentrated we could have had them all cancelled (...) but we knew nothing! (...) My generation is sorely lacking in knowledge of what legal support is, my lawyer always says this.

When retracing his experience, Marco affirms that 'he has never fought legal battles'. It is as if before the conviction, the law was an external and almost invisible element. This is also confirmed by his underestimation of the risks he incurred by not respecting the ban. His regrets on individual and collective legal instruments seem to translate a changing representation of the law as a potential battleground on which actors can display resources and weapons in order to obtain positive outcomes. His practices, however, do not (yet) sustain a 'with the law' position, since the experience of repression strongly weakened his current perspectives of direct, individual engagement: he describes himself as reflecting on finding new, safer and more effective ways of being an activist in the future.

The ban was also somehow perceived as a challenge by Anna, but in a slightly different way which reveals a distinct relation to the law. The feeling of 'being right' and the trust in knowing that this would potentially be recognized in court, played a key role in her will to remain an overt activist:

Because the objective was to prevent us from giving assistance to migrants! Well, for me it had the opposite effect: if I hadn't had the fvo, I probably would have left Ventimiglia before. I stayed on purpose. I wanted to show that I was right.

The ban and the trial for its annulment also contributed to a process which was already initiated before her arrival in Ventimiglia: a shift in her relation to law and justice from a more ideological vision in which they

⁴⁴ Similar dynamics were also identified by Lendaro among her respondents (2021: 74).

were seen as solely repressive devices, to a more pragmatic perspective recognizing that the law can be a weapon for social movements - at least in the short term and when the balance of power is heavily uneven.

Let's say I used to have a more anarchist view that if you engage in political struggles, you shouldn't interact with their (the State's) notion of justice. Then I realized that in ordinary life, if they don't even allow you to give a sandwich to a hungry person, then interacting with justice in a more conventional way, and lodging an appeal, is sometimes the only way (...). Also, if no one goes to court, the balance of power... There can't be a balance of power against all the police, the carabinieri, the PAF⁴⁵, and all the Italian and French police at the border. But if you're right, the lawyer only has to go to the judge, and automatically the police are forced to back down.

Compared to Marco and Matteo, Anna expressed a much higher level of trust in the law as a weapon to force the State to back down, and in lawyers and judges as law professionals. This trust significantly influenced her life trajectory and self-perception as an activist: Anna says she now feels more confident and stronger in her current commitments in helping illegalized migrants, and resumed her studies enrolling in a law degree which she thinks will help her be more effective in her actions of solidarity.

The complexity of the effects which bans and judicialization had on defendants' legal consciousness deepens the general observation that criminalization resulted in the depoliticization of solidarity and helps shedding a light on the ongoing transformation of, especially youth, activism and engagement.

Conclusion

The criminalization of solidarity towards illegalized migrants at Europe's external and internal borders is in full swing, following on from the criminalization of racialized post-colonial migrations, as well as the judicialization of social movements. By presenting the case study of territorial bans issued by Italian police against 'No Border' activists on the French-Italian border region of Ventimiglia, this article addressed the question of law as a double-edged weapon for social movements. Firstly, it aimed to further our understanding of the conditions under which this weapon can be turned against the State as a defensive tool and as a political opportunity. It demonstrated how, while defendants and their lawyers succeeded in having the bans annulled in court, the specific features of the repressive instrument, of the social movement itself, and of the structure of legal and judicial opportunities prevented a political back-firing of repression to further the cause. Secondly, this article aimed to gain a better understanding of judicialization as experienced by activists by observing its effects on their legal consciousness, and therefore of how repression affects social movements. It demonstrated how this peculiar specific case of judicialization distanced the more experienced and multi-issue activists, but at the same time sparked political awareness among younger activists and transformed their self-identification as activists as well as their perspective on law and legal instruments. While activists generally express an 'against the law' or 'under the law' legal consciousness, judicialization can lead to a more 'with the law' oriented perspective. Finally, the article highlighted the articulation between activists' biographies and social positions in terms of age, class and gender, and the variations in their experience of repression. This result partially addressed Solidarity Watch's (2021) invitation to investigate what and who, within the

⁴⁵ *Police des Ais et des Frontières*, French border patrol.

networks of people facilitating autonomous movement in Europe, is unveiled when talking about ‘criminalized solidarity’, and what and who remain hidden.

Through these brings, the case study provided food for further understanding the geography of solidarity as well as its composition and sociological grounds, and for further debate over its (a)political nature (Zamponi 2017, Sinatti 2019, Vandev Noord 2019, Fleischmann 2020). This study is however not without methodological limitations, namely in the extension of the qualitative sample and in its comparative dimension. Further research should address both, and further grasp the role of lawyers. Understanding criminalisation of solidarity and social movements, with its effects on citizens' (non) mobilizations, appears crucial for the future of the European democratic project.

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Daniela Trucco is a political scientist broadly interested in the multilevel politics of migration and citizenship in Europe. Her work engages critical border studies, citizenship studies, socio-legal studies and solidarity/no-border politics. She received her PhD in 2015 from the University of Genoa, Italy, and the University of Nice, France. Since then, she has been working mainly on two objects and fields: the Italian citizenship and naturalization law together with its implementation, and the local (un)making of migration control at the southern French-Italian border. Former scientific member of the Ecole française de Rome, she is currently a FNRS post-doctoral researcher at the Université Libre de Bruxelles (CDPS) focusing on legal mobilizations and consciousnesses among solidarians and other citizens living or working in border areas. She is a fellow researcher of the French Collaborative Institute on Migrations (ICM) and a member of the ECPR Standing Group on Migration and Ethnicity.