

***Persona non grata*, Consequences of security and migration policies at the France–Italy border – Observation report 2017-2018**

Summary

The increasingly restrictive migration policies of the EU and its member states are alarming, particularly at a time when rescue missions at sea or in the mountains are hindered by public authorities and far-right groups. Solidarity and 'fraternité' are more and more criminalised throughout Europe, and especially in France.

Since 2011, Anafé has used its thirty-year field experience at the external borders of the Schengen area to help local players at the France–Italy border, monitoring the developments of internal border control and its consequence on foreigners.

In 2017 and 2018, working with local, national, French and Italian partner non-profits and NGOs, Anafé has monitored the border and has collected testimonies in order to condemn the illegal practices of the French administration against foreigners arriving there.

From Menton to Ventimiglia, in the Roya Valley, from Briançon to the Col de Fréjus and Modane, via the Col de Montgenèvre and the Col de l'Échelle, the conclusions are the same: discriminatory controls, hasty procedures, human rights violations, endangered people, irregularities in entry denials, hindrances to the access to asylum, failure to look after unaccompanied minors, irregular push backs, irregular detention, police chases, violence, injuries and deaths.

Persona non grata is structured around three main points:

- the militarisation of the border (history, re-establishment of internal border controls, militarisation, and their consequences),
- human rights violations (police checks and questionings, denied access to human rights, detention and push back),
- solidarity (endangering foreigners, pressure against human right defenders, and resistance, particularly with non-profits).

A few figures

Number of entry denials: 15,745, including 4,079 at internal borders in 2015; 63,390, including 51,779 at internal borders in 2016; 86,320, including 70,076 at internal borders in 2017. According to the French authorities, in Alpes-Maritimes, 32,285 people were arrested in 2016, 48,362 in 2017, and 12,538 from 1 January to 24 May 2018. In Hautes-Alpes, 316 entry denials were notified in 2016 and 1,900 in 2017. In Haute-Maurienne, more than 7,000 denials were notified in 2018.

These figures should be considered cautiously, considering that a person often makes several attempts to cross the border and would be notified as many denials. The misuse of figures reinforces the misconception of an alleged invasion of foreigners coming from Italy.

A border under military control

The 515 kilometres separating France from Italy are the result of centuries of bilateral negotiations between the two nations, marked by population movements due to economic, political or family reasons.

With the introduction of the right of free movement in the Schengen area, this border has taken on a new dimension. However, while free movement of EU citizens within the Schengen area is a right, it does not preclude states from carrying out controls under conditions governed by the Schengen Borders Code. Thus, as early as 2011, France decided to re-establish controls at its border with Italy. In June 2015,

discriminatory identity checks, and residence and travel permits checks started to develop in Alpes-Maritimes.

Since November 2015, the successive extensions of decisions to maintain internal border controls and the various legislative reforms (in particular the law of 30 October 2017 strengthening internal security and the law of 10 September 2018 on controlled immigration) have jeopardised the right of free movement within the Schengen area. Checkpoints have multiplied, justified by the "necessary" fight against terrorism. However, observations have shown that internal border controls have been re-established under false pretences, with the undeclared objective of "fighting illegal immigration", undermining human rights in the process.

The militarisation of the border, whether in terms of human and material devices deployed, or in terms of military techniques used, is impressive. Foreigners and human rights defenders are targeted, often in a "manhunt-seeming" way, which entails serious consequences for human beings at this border.

These recent developments have forced foreigners to take ever greater risks to escape police checks; the France–Italy border has become a border that wounds, psychologically and physically, or worse, that kills. Between 2016 and 2018, according to gathered data, nearly thirty people have died at the border between France and Italy. There's a high probability that more bodies could not be found due to the geography of the area.

For the last few weeks, although it hasn't been cold yet and the snow has yet to fall, we have begun to receive people with frostbites on their hands and feet. And currently the temperatures are not that low. We are afraid of what will happen this winter. [Anafé interview with activists, 8 November 2018]

Violation of procedures and human rights at the France–Italy border

Since 2015, the French administration has been applying its external borders procedure at the France–Italy border while not respecting its legal framework and, above all, the related rights. A large margin of discretion in the implementation of the law is observed by non-profits and human rights organisations and bodies. Illegal practices have expanded, from arrests to push-backs.

The re-establishment of internal border controls by France has been marked by an unprecedented development of control systems: 17 authorised border checkpoints, combined with random checks (rail, road; and pedestrian; fixed or mobile). These police checks, most often based on discriminatory criteria, now punctuate the landscape of the France–Italy border.

Questions also persist about the legality of the procedures for stopping and arresting people at the border. Passengers are questioned according to "external" signs, such as their skin colour, their "smell", their clothing, etc.

Since July 2015, the French border police has denied thousands of foreigners entry in France at the land border with Italy without respecting the legal framework. For example, a significant number of entry denial documents have been signed directly by the arresting officers, who are not always qualified to do so. When the arresting officer is qualified, their signature is often basic, without specifying their rank and/or identity.

Similarly, any entry denial decision must be individually examined by the competent authorities and written in a language understood by the concerned person, who must also be informed of their rights. This is not the case at the France–Italy border.

A double practice can be observed: hasty procedures associated with constant violations of foreigners' rights. Thus, foreigners are not informed of their rights, and when they request to exercise them, these rights are not granted to them:

- *The right to be assisted by an interpreter in a language that is understood.* No interpretation services have been required by the French administration.
- *The right to be examined by a doctor.* Access to healthcare at the France–Italy border has proven to be impossible.
- *The right to have access to a lawyer or an human rights non-profit.* Lawyers' access to questioned and arrested foreigners has been denied several times.

- *The right to appeal against an administrative decision.* Foreigners are not informed of this possibility and are unable to be assisted in filing an appeal.
- *The right to benefit from a "clear day".* While this right was abolished at France's internal borders with the law of 10 September 2018, it had been denied to all foreigners at this border for three years before that.
- *Unaccompanied minors.* Although administrative practices have changed as a result of non-profits and French human rights bodies advocacy, and because of rulings by the Nice Administrative Court, the suspicion of a minor lying about their age often prevails over their statements. The French administration uses practices that are contrary to the necessary protection of unaccompanied minors, justifying push backs of minors because they have "stubble", an "adult appearance" or even, by changing their date of birth.
- *The right to ask for asylum.* Not only isn't this right notified, foreigners who clearly express their willingness to exercise it are denied it.

I arrived in Clavière on Wednesday (...). We went up the mountain. There were many of us. I walked behind the grown-ups. We walked for a very long time until about 03:40. I was very tired. The gendarmerie found us around 04:00 at the crossroads next to the train station. There were only 4 of us left because the group had broken up on the way. The gendarmes surrounded us. I ran away. The gendarmes chased me. After a while, I fell because I have a heart condition and when I make a violent effort or when it gets too cold, I suffer and lose consciousness. I fell down because I fainted. I had a lot of trouble breathing. (...). I asked to be taken to the hospital but they told me that it was not possible (...), I was very weak. I remember the gendarmes getting me out of the car at the border and me waiting a long time in the cold. After this I don't remember anything. When I woke up, I was at the hospital in Suze. [Testimony of a foreigner gathered by Anafé on 22 November 2018 in Briançon]

Whether they have been arrested in train stations, on roads, or on hiking trails, foreigners may find themselves detained in Menton Pont Saint-Louis, Menton-Garavan, Modane or Montgenèvre, sometimes for many hours, in places built upon a questionable legal system and characterised by deplorable conditions of detention and an absence of rights: deteriorated premises; inhumane conditions of detention (deplorable state of cleanliness, lack of insulation, lack of furniture for resting or sleeping, lack of food and water); no separations between men/women, and/or adults/minors; inability to exercise their rights; arbitrary detention for up to 14 hours.

The illegal practices of detention at the Menton Pont Saint-Louis police station have been brought before the Conseil d'État in June 2017, who refused to sanction them. It has thus given carte blanche to administrative authorities who continue to violate international and national laws and fundamental rights.

Meeting with a Guinean man. He has just been pushed back by the French authorities at the Saint-Louis Bridge. He was detained during the night. He explained that there were about ten people with him. He didn't receive any water or food. [Anafé observation report, 27 November 2018]

The hypocrisy of the authorities' speech concerning these detention places violates the concept of human dignity. The denial of the existence of detention at this border is serious, given that it has undeniable consequences on physical and psychological health. In this context marked by criminalising, discriminatory and arbitrary practices, detention is in itself a source of vulnerability.

The aim of these practices is to lock foreigners up in order to keep them away, in spite of the need for protection for some, and then to push them back illegally. Since 2015, at the France–Italy border, dozens of people suffer abusive push backs every day. These practices at work have important consequences in terms of violations of rights and endangerment of people. Moreover, a push back from France does not mean that the Italian authorities will take care of the people in need of protection.

Solidarity threatened more than ever?

The border is often a place where general societal phenomena of rejection of foreigners are expressed, particularly when policies aim to criminalise and dehumanise them. The testimonies collected are revealing and condemn verbal or physical violence, degrading treatments, denunciations, etc., whether perpetrated by the police or by part of the population and far-right groups.

While these behaviours remain unpunished, those who try to help foreigners are, on the contrary, threatened or prosecuted. Hate speeches, filled with violence, are directed against those in solidarity. In addition to this reigns an atmosphere of control and pressure from the police against human right defenders. Police pressure, chain identity checks, government databases of activists, threats of prosecution, questionings by the police, police searches, police custody...

Some people are regularly worried about their actions on the basis of the 'délit de solidarité'. Cédric, Pierre-Alain, Martine, Benoît, Lisa, Mathieu, Juan, Théo, Bastien, Eleonora, Raphaël... These names of activists at the France–Italy border, who have been prosecuted and sometimes convicted, are not exhaustive but reveal this determination against those in solidarity.

On 13 December 2018, the Gap Criminal Court found the 'Briançon 7' guilty.(...) The heavy sentences reflect clearly the intention of the court to "mark the occasion", to dissuade anyone from helping foreigners.(...) This trial is emblematic because they are in fact accused of having been among the 200 peaceful demonstrators against the presence in the mountains of the group 'Génération Identitaire', the militarisation of the border, and the violations of human rights.(...) This trial goes against a fundamental French right: the freedom of association and demonstration. [Excerpt from the Persona non grata report, p. 106]

Human right activists are increasingly prosecuted and convicted for the 'délit de solidarité', against all values of humanity, solidarity and 'fraternité'.

While public authorities create illegal and dangerous situations in a part of France and hunt down those who try to condemn these actions, citizens, activists, elected officials, journalists and human rights non-profits work to condemn these violations and act together to change the administration's practices. Thus, the mobilisation is strengthened and continues to grow to defend humanist values. From the urgency of rescues to accommodations, from information to the fight to exercise one's rights, activist forces gather and join to try to stem the serious state abuses at the France–Italy border.

The coordination among all these players has gradually made it possible to create links and provide activists with training, tools, etc., in order to identify, report and condemn human rights violations, whether before the courts or through communication and advocacy channels.

Activists found relays in some elected officials and human rights bodies such as the 'Défenseur des droits', the National Human Rights Commission or the General Inspector of Confinement Centres, whose recommendations reinforced the activists' daily observations. The initiatives of these bodies demonstrate how much the situation in Alpes-Maritimes and Hautes-Alpes has become a societal and political concern of national scope.

Facing a migration policy with disgraceful consequences, that often neglects the respect of people's rights when it should put them forward, many human right defenders thus honour the values of humanity, solidarity and 'fraternité'. By giving time and energy out of sheer conviction, they become indignant and endeavour to use the tools of resistance still guaranteed by the principles of democracy and citizenship.

Recommendations

After three years of monitoring at the France–Italy border, and in regards to the observations made throughout its report, Anafé can only regret the difficulties in communicating with several French authorities at both local and national levels. Human rights, 'fraternité' and solidarity have been relegated to the background, in violation of international, European and national commitments. Incessant violations of foreigners rights, non-compliance with or misuse of procedures, daily illegal practices, silence of the courts (with the exception of some rulings of the Nice administrative and criminal courts), and the legitimisation of illegal practices to the detriment of human rights by the legislator all persist, while the rise of denunciations and xenophobic and racist practices remain unpunished.

Anafé asks that foreigners arriving at land borders can:

- ➔ have access to their rights and are not subject to illegal procedures or procedural abuses;
- ➔ be properly informed of their situation, the applicable procedure and their rights, especially regarding the right to asylum;
- ➔ benefit from the assistance of a professional interpreter and effective legal assistance at any time and this starting from the beginning of the procedure (through the establishment of a free legal advice service) and the presence of an ad hoc administrator for unaccompanied minors;
- ➔ be treated with dignity and be no longer subject to arbitrary practices or violence;
- ➔ be no longer detained for reasons related to migration control.

Anafé requests that the administration:

- ➔ organise the rescue of people in danger, particularly in high mountains, and the care for injured and/or sick people;
- ➔ examine individually the situation of each foreigner and, when appropriate, justify entry denials and any measures of detention;
- ➔ cease to refuse to register asylum applications and respect at least the asylum procedure and the principle of non-refoulement, also valid at internal borders;
- ➔ take care of unaccompanied minors on the territory;
- ➔ enable civil society and non-profits to effectively exercise their right of access to detention places in accordance with European provisions.

Anafé also recommends that the French legislator:

- ➔ put an end to the 'délit de solidarité', whether it concerns entry, movement, or residence;
- ➔ work to ensure that the re-establishment of internal borders controls is stopped.