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Asylum procedure and narrative strategies in France¹

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If you had looked up “asylum” in a French dictionary² a century ago, you would have read that asylum is “the inviolable place where someone can find protection”. Nowadays, in a contemporary dictionary, this term refers explicitly to International Law, especially to the 1951³ *Geneva Convention*. Being an asylum seeker means to run away from your own national country and submit yourself to an administrative process in order to obtain legal protection by another sovereign state. Asylum Seeker is an administrative category which appeared in the 1980s. It includes people with different life itineraries and social situations. The only thing asylum seekers share is their legal situation in the host society. Waiting for civil servants to process their application, they are in a “liminal” situation (Gennep 1969; Williams 2004) with few humanitarian rights granted. It is possible to wonder how they experience this liminal situation in everyday life and mobilize different resources to cope with it (Williams 2004). I chose to focus on a particular topic: *how they face the legal process, which resources they mobilize and the role that NGOs play in this process*. Beforehand, asylum seekers were called “refugees”, when most of them were granted this legal status. The birth of this category is linked to a growing suspicion towards the aliens who ask for refugee status. Since the borders have been closed to labour immigration, asylum seekers are more and more suspected by European States and, more generally, by western host societies, to be “false/bogus refugees”. So that, since the mid-1980s, the members of the European Union have implemented a policy of deterrence at a national and European level (Guillon, Legoux and Ma Mung 2003). Those measures have made it more difficult to cross the geographic borders, but also some social frontiers defined by legal status. Nowadays, in France, with an agreement rate of less than 20% (OFPRA 2006), it has become easier for an asylum seeker to become an undocumented immigrant than a refugee. This low rate could be explained by numerous reasons (difficulties to understand the administrative process, linguistic difficulties, dysfunction in the determination process...), but is often perceived and presented in the political discourse solely as evidence of the large number of “bogus applications”.

In his famous history of refugees in France, Gérard Noiriel summed up the central dilemma most refugees face today during the determination procedure: how to prove fear of persecution when you have no empirical evidence? (Noiriel 1999) This legal constraint produces a wide range of social practices prior to and during the legal hearings. Procedure has become a strategic argumentative game in which asylum seekers’ competence and networks are mobilized to produce a “performative life story”. To study their strategies, I conducted an ethnographic fieldwork in the Paris area. Qualitative data was collected in French NGOs that

¹ This presentation is based on a publication in *Le Croquant*, 51-52, 2006. <http://terra.rezo.net/article550.html>. I would like to thank you the research Programm [FRONTIERES](http://www.frontieres.org) for its financial support to this journey. I am very thankful to all people who accepted to take part in this inquiry.

² *Emile Littré dictionary* (1863). <http://francois.gannaz.free.fr/Littré/accueil.php>

³ <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

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care for asylum seekers and ten of them were my principal informants. I also conducted interviews with civil servants, NGOs' legal advisers and NGOs' medical experts. I conducted observations in legal and medical NGOs.⁴

First, I will examine the social function of the asylum legal process in the host society and argue that it can be regarded as an “institutional rite” (Bourdieu 2001). Then, I will look closely at the resources which are required for passing this rite and their unequal repartition among candidates. Finally, I will analyse how the non governmental sector plays indeed an increasing and ambiguous part in this process.

1- The asylum legal process as an “institutional rite”

■ Institutional rite according to Bourdieu

The asylum legal process can be regarded as an “institutional rite”. This concept was elaborated by Pierre Bourdieu who criticized the limits of Genep and Turner's works on the “rite of passage”. From his point of view, they paid no attention to the social function of the rite of passage in society. According to him, the rite institutionalizes, legitimizes and naturalizes the division between groups (Bourdieu 2001). First, it solidifies the different categories: the group you ought to leave and the group you should join are clearly divided. The rite of passage institutionalizes the status of people who passed it on a long-term basis. And it legitimizes the difference of treatment between people belonging to those different groups. Secondly, it makes people forget the fact that some groups are submitted to this rite of passage, and others are not (for example, a woman will never be submitted to the rite of circumcision) and makes people be unaware of the arbitrary nature of this difference of treatment between groups.

■ Asylum seekers and Refugees

The asylum legal process establishes a boundary between asylum seekers – who have to show their legitimacy – and refugees who are legitimate. The first have to prove their legitimacy by telling a story of violence in most of the host society's institutions (medical/social). They are in a precarious situation which prevents them from making any plans. They are stuck in the present. The others can stay on French territory and are no longer asked to prove their legitimacy. We have to take into consideration the fact that the latest reform of French asylum law, in December 2003, blurred this boundary by introducing a new category: temporary protection (*protection subsidiaire*). It corresponds more or less to the Exceptional leave to Remain (ELR) in the U.K. In Europe, this category is widespread. Nevertheless, in France, it was not the case before 1998. The first step down this path was the creation in 1998 of territorial asylum (*asile territorial*) delivered by the Prefecture, instead of the OFPRA – the administration in charge of refugee determination process. Introducing this category of temporary protection weakened people who obtained it, but it reinforced the social status of those who did succeed in obtaining refugee status as a rare group.

⁴ I carried out my research as a volunteer in a NGO that specializes in legal advice for two years. I informed people about their right, explained the legal process to them and helped them write their narrative. I completed this study with interviews with other legal NGOs. I also carried out research in medical NGOs because they are more and more called upon as experts in the legal process. Attestation by an expert such as a doctor or a psychologist that patients' observed symptoms are consistent with their narrative becomes a crucial element in support of their claim for refugee status. In these NGOs I met ten refugees (most of them from Africa) who became my principal informants. I would like to thank them all for their availability and for the advice they gave to me during the fieldwork. Their names have been changed.

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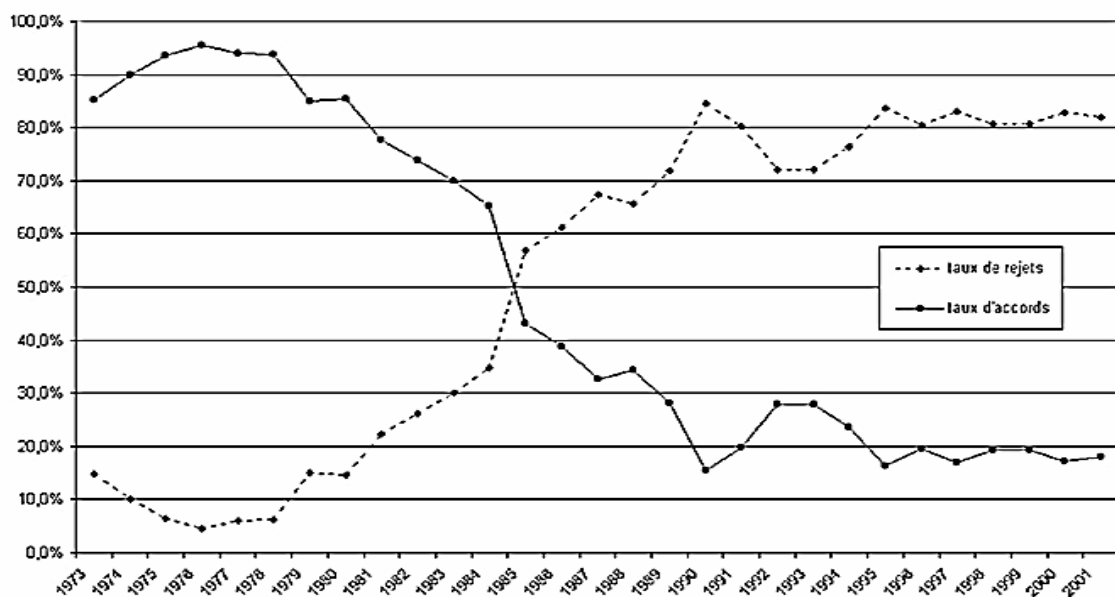
■ Insider and Outsider

Besides, this rite conceals the social and historical boundary between people who will never be submitted to this rite of passage – the member of the national community – and people who have to. It masks the arbitrary privilege of those born in a democratic and wealthy country. To refer to Bourdieu's terms, it makes people more unaware of the arbitrary nature of this difference of treatment between groups. And this, in a context where nationality is now considered a quasi natural quality of the person (Stolcke 1997).

■ Authority of legitimization

Moreover, for the rite to be operating, an instance of legitimization is required. This instance must be recognized as legitimate by the member of society. OFPRA and CRR can be regarded as such instance. They were created after World War 2 on a national legal basis in order to enforce the international refugee law. The sovereign State delegates to its mandatory agents (civil servants of the OFPRA and judges of the CRR) the task to accomplish the "social magical act" by which an asylum seeker is transformed into a refugee. In accordance with the rational legal authority, most citizens from the host society do not put into question the system.

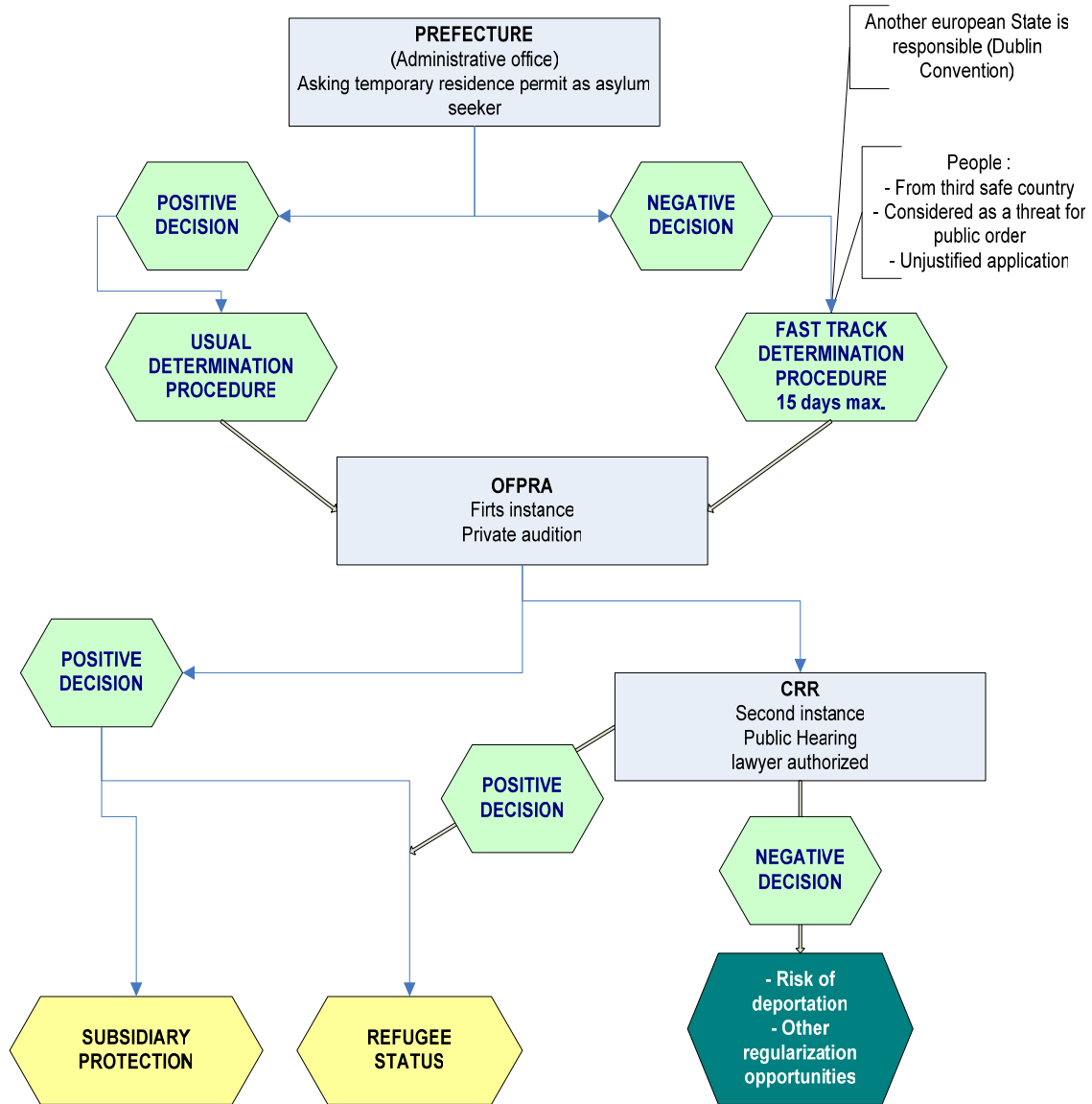
Evolution des taux d'accords et de rejets par l'OFPRA depuis 1973



Graphique extrait de J.P. Allaux, « L'Asile dans le pot commun de l'immigration », *Plein Droit*, n° 59-60, 2004.

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French Asylum Procedure



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■ Differentiation and hierarchy

Rite of Passage is a classificatory operation. As Bourdieu points out, differentiating people means often organizing a hierarchy between them. Thus, people who are granted refugees status obtain a residence and work permit, social rights and are entitled for the family reunification process – though it takes time in practice. Those who are granted temporary protection do have not the same treatment as those granted refugee status. Their status has to be renewed each year. Thus, this is a constraint in different fields (such as housing, working...) and certainly in the way of experiencing one's integration in the host society. Inevitably, the rite de passage has a drawback for those who do not pass it. Through the legal process, the asylum seekers who are dismissed by the court are then viewed as illegitimate and unfit to remain on the territory. According to the rational legal authority which prevails in occidental societies, this rite of passage legitimizes refugees to gain social and civil rights> It also legitimizes others' relegation.

2- Constraints and resources in passing the ordeal

■ Distinction between procedure and performance

The distinction between “procedure” and “performance” (Tambiah 1981) helps to understand what it means for an asylum seeker to be submitted to the legal process. To perform a rite, the actors must have information about what they are supposed to do, when and how. They have to know the procedure. And it is often because you have been socialized in a culture since you were born that you know the procedure. Performance is the action of conformity with the procedure in a particular time and place. As Daniel Arsenault underlines, a performance matches more or less the procedure. For a successful performance, several conditions are required: knowledge of the procedure, skills, physical and psychological state of the actors (Arsenault 1999).

■ Resources

The research I carried out in the NGOs sector has confirmed the hypothesis of the necessity, in many cases, to benefit from advice and social care during the process. In the current context, it is difficult for an asylum seeker to be heard by the legal authorities. Most of the time, expressing the events is not enough. The asylum seeker has to be prepared to the expectations and the suspicion of the civil servants.

When Zaïre. asked for territorial asylum, he went to the prefecture. There, “a civil servant asked me :

- Why did you leave Algeria?

I was trying to explain but she interrupted me all the time by saying ‘ I know that's not the reason why you left Algeria’. She took a little piece of paper, you know, the piece of paper where you write an appointment for somebody. She did not even take a sheet! She just wrote a few words. She kept interrupting me. I felt it was useless and became angry. I told her that I could not tell her what she wanted me to tell, because she was wrong. I was not here to find a job. I stand up and left.

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When Salomon arrived in France from Burkina Faso, he was only 19 years old. He had no relative in France and it took him time to build a social network. When he went to the OFPRA, he did not know anything about the hearing. He realized his performance didn't measure up to the civil servant's expectations after seeing a program on television about the way they decide to grant status. At that time, he realized he was not accurate enough in his account/narrative. (les deux ok)

Léontine, from Haiti, who gained her legal status after we reopened her case and prepared the file together. Three years before, she had tried without success to be heard; she explained to me in an interview that she was so stressed the first time around that she could not explain what had happened.

The observation and interview conducted in a legal NGO and with asylum seekers have shown:

- First, how important it is for an asylum seeker to know about the procedure and the cultural codes of the hearing process. Like Barsky's research in Canada, the fieldwork in France also showed how important it is for asylum seekers to correspond with the image a judge has of what a refugee is/isn't. Barsky calls this "producing a productive other" (Barsky 1994).

- Secondly, it is important for them to be in a good physical and psychological condition when they perform the rite. The inequality of resources that can occur between candidates can be linked to their trajectory and social position. From this perspective, the NGO sector is an important part of social capital candidates can mobilize to be more "performative" in the legal process and also to refer people to health care services. Different actors in the NGOs' sector are legal advisers for asylum seekers at the different stages of the procedure. From a sociological perspective, these inequalities are mainly connected to their linguistic, economic and social capital. The NGO sector intends to correct those inequalities. But, because of a lack of resources, it reconfigures more than it corrects those inequalities of resources.

3- NGO's dilemma on the backstage

3.1. Ethical Stands

Different positions occur (are found) in the legal NGO sector which could be located between two poles. The first pole is made by NGOs' members who envisage their role as simple/mere "letter writers". They give the factual information about the procedure and write in understandable French what the asylum seeker is saying in a clumsy manner. The second one is made by NGOs' members who consider that, in the context of suspicion that prevails in France, they have to help asylum seekers to adapt their discourse to that expected by the institution. This does not mean making up a story. It means helping asylum seekers to adapt to French administration cultural codes. The "legal rationality" prevails among both positions; in the interview, none declared he could accept to make up story. Both of them declared they would not make up a story.

3.2. Narrative Strategies

■ Meet the legal categories

First, the work on narratives is linked to the legal frame. As Bourdieu wrote (1987: 831) "To join the game, to agree to play the game, (...) (it) is above all to recognize the

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specific requirements of the juridical construction of the issue. Since juridical facts are the products of juridical construction, and not vice versa, a complete retranslation of all of the aspects of the controversy is necessary in order, as the Romans said, to *ponere causam* (to "put" the case), that is to institute the controversy as a lawsuit, as a juridical problem that can become the object of juridically-regulated debate." Here, it means respecting the frame imposed by the Geneva Convention. It means insisting on why the fear of persecution is "individual", to insist on the "racial", "religious" (etc.) aspects of it. It means demonstrating that one's story matches the administrative categories, even if the distinctions between those categories are not the same in the asylum seeker's country of birth.

■ **Meet an occidental cultural narrative setting**

It is also a matter of narrative scheme in Ricoeur's terms. You have to give all the plot elements in detail, so that the interaction between NGOs' legal advisers and asylum seekers tends to be an interview that generates some symbolic violence. This work often colors the narrative with a factual tone. It also produces some censorship and self-censorship in the expression.

■ **Meet the cultural representation of the judge**

It is also important to correspond to the representation of the judge to avoid arousing suspicion. For example, you have to hide any economic problem you could have in your birth country. Even if the sociological research showed that economic and political problems are often linked and that political threat can lead to impoverishment. Or it is better to stick to an occidental way of explaining events:

Once, I was observing a NGO actor helping an African asylum seeker to transcribe his story. The latter explained that he was convinced that his father succeeded in escaping from an ambush through sorcery. Immediately, the NGO actor told him it would not be a good idea to tell that in front of the OFPRA. It would be better to provide a more 'realistic' reason.

■ **Find a moral or scientific caution in the host society**

Finally, documents are important and medical reports take an increasing place in the asylum file. These reports rely on scientific language to convince. But they also call for compassion by insisting on the pain that people have suffered. (Fassin and Halluin 2005). This social call for medical expertise raises a dilemma among physicians and psychologists. Today, no financial support from the legal apparatus is given to experts to carry an independent expertise. Lawyers, asylum seekers and even civil servants turn to the medical NGO sector for this expertise. A number of GPs and psychiatrists stopped doing it, unwilling to see their knowledge instrumentalized by the state institution in order to select candidates; others go on, expecting it to help their patient.

Conclusion

Thus, asylum seekers often practice their play, warm up their voice before performing the rite of passage. They rely on the advice they were able to receive through their network. It is not always the case, but then, it can be tricky to perform the rite without knowing the

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procedure. To obtain the rare refugee status, asylum seekers have to conform to the order of legal, forensic and moral world of the host society. Neither NGOs nor asylum seekers ever call into question the basic premise of the rite, that is, that civil servants have the exclusive capacity/power to determine if they are credible or not.

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