



International Journal of Migration and Border Studies

ISSN online: 1755-2427 - ISSN print: 1755-2419

<https://www.inderscience.com/ijmbs>

**Reconciling the tensions of the European deportation regime:
how the law shapes compulsory mobility across borders**

Anouk Lamé

DOI: [10.1504/IJMB.2026.10079949](https://doi.org/10.1504/IJMB.2026.10079949)

Article History:

Received:	26 May 2025
Last revised:	30 March 2026
Accepted:	27 May 2026
Published online:	16 September 2026

Reconciling the tensions of the European deportation regime: how the law shapes compulsory mobility across borders

Anouk Lamé

MOBILE Center of Excellence for Global Mobility Law,
University of Copenhagen,
Karen Blixen Plads 16, 2300 , Copenhagen S, Denmark
Email: anouk.lame@jur.ku.dk

Abstract: This contribution explores the role played by European, human rights, and national law in contemporary deportation practices. Different forms of deportation, such as returns, Dublin transfers, and expulsions, are built upon a broad set of rules and practices. Taken together, these rules enable states to lawfully and compulsorily displace hundreds of thousands of individuals across European borders every year. Drawing on insights from different legal frameworks of deportation and on a large-scale dataset of deportation judgments in French lower courts, this article shows that deportation is regulated in the European Union by an overarching and complex European deportation regime. The nature of deportation, as a form of compulsory mobility enforced through individual orders that can be challenged in courts, positions national judges as key actors in this regime. This article contributes to existing scholarship on law and human mobility by documenting how law and judicial practices shape compulsory mobility.

Keywords: deportation; deportability; compulsory mobility; European migration law; French administrative law; border control; expulsion; Dublin transfer; refusal of entry; empirical legal studies; France.

Reference to this paper should be made as follows: Lamé, A. (2026) 'Reconciling the tensions of the European deportation regime: how the law shapes compulsory mobility across borders', *Int. J. Migration and Border Studies*, Vol. 9, No. 6, pp.57–75.

Biographical notes: Anouk Lamé is a Postdoctoral researcher at the Centre of Excellence for Global Mobility Law (MOBILE) at the University of Copenhagen. She holds degrees in Political Science and International Affairs from Sciences Po, Paris, and Legal Theory from EHESS/University Paris X-Nanterre. Her PhD is at the University of Copenhagen examined the judiciary's role in defining migrants' irregularity through a case study of deportation cases in French lower courts.

1 Introduction

Deportation displaces around two hundred fifty thousands of individuals in and from Europe every year¹. Yet, it is not often conceptualised as a form of human mobility *per se*. Despite the wealth of legal instruments regulating the compulsory mobility of

illegalised migrants across borders and the key role played by courts in interpreting and enforcing them, the global phenomenon of deportation remains overlooked in legal scholarship. This article aims to shed light into how the law operates to enable and facilitate deportation practices in Europe. By shifting the gaze away from the dichotomy between forced and voluntary migration and emphasising the active role played by the law to shape mobility, the empirical project of global mobility law serves as an entry point to understand how the law concretely operates to deport individuals in and from Europe.

The dichotomy between voluntary and forced migration is the conceptual ground on which international refugee law is premised. Despite repeated calls to move away from this dichotomy, it continues to inform much of the political and humanitarian discourses around protection of people on the move (Akoka, 2020; Crawley and Skleparis, 2018; Hamlin, 2021). This distinction also structures international migration law, which has been dominated by international refugee law (Ramji-Nogales, 2017). ‘Forced migration’ is traditionally understood as a form of human mobility triggered by the actions of the migrants’ home state, which are framed as violations of international law. Conversely, deportation is widely accepted as a prerogative of states’ sovereignty under international law and only exceptionally framed as an act that would violate international law (Chetail, 2016; Dauvergne, 2008). Global mobility law recognises that the law plays a complex role in structuring global mobility patterns beyond the limited role played by international law (Ramji-Nogales and Spiro, 2017). This approach thus challenges the state-centric perspective on law and places mobility and the figure of the migrant at the centre of the analysis (Kmak, 2024). Focusing on migrant autonomy when studying global mobility law brings into light another type of mobility which denies this autonomy and, in the words of Matthew Gibney, “constitutes forced migration *par excellence*: individuals who are deported from their State under the operation of law” [Gibney, (2013), p.116].

The article draws on an analysis of the legal frameworks composing the European deportation regime and on a case study of deportation adjudication in French lower courts. French authorities account for almost a third of the total of return decisions issued to third-country nationals in the EU. In turn, French judges are called on to interpret the European deportation regime at a scale unmatched in Europe and deportation judgments represent more than 25% of the total of judgments in first instance administrative tribunals. Since 2022, French courts make all their judgments from all levels of jurisdiction available open access. Drawing on this data, this study identifies deportation cases in administrative judgments, and uses systematic feature extraction to computationally retrieve the legal frameworks of more than 100,000 deportation cases in first instance administrative tribunals between June 2022 and June 2025.

The article introduces a ‘compulsory mobility’ frame that integrates returns, transfers, and refusal of entry as different facets of deportation and paves the way for a more holistic perspective on the, often siloed, legal frameworks of deportation. It maps the legal architecture of compulsory mobility as it appears in the European deportation regime. This regime is composed of distinct, and at times overlapping, legal frameworks stemming from EU law on asylum and return of third country nationals, EU citizenship, bilateral readmission agreements between deporting countries and the countries of return, as well as human rights such as the right to a private and family life, or the right not to be subjected to inhumane and degrading treatments. Looking beyond these formal rules, the empirical analysis on deportation adjudication in French lower courts reveals how the tension between facilitation and protection at the heart of the European deportation

regime is locally enacted in a concrete empirical setting. The article thus opens room for a legal research agenda on deportation practices inspired from the approach of global mobility law, which focuses on the concrete operations of the law by which deportation is either facilitated or limited.

The rest of the article proceeds as follows. In Section 2, the article draws on existing social science scholarship on deportation to show that a vast array of deportation practices which are not commonly conceptualised in legal studies as different facets of the same phenomenon can be characterised as a form of compulsory mobility. In Section 3, the study identifies the global ensemble of norms that regulate compulsory mobility which this paper call the European deportation regime. Section 4 unpacks how this European deportation regime operates in practice in French lower courts where the tension between facilitation and protection is consistently reopened and resolved on the ground. Finally, Section 5 concludes the article.

2 Deportation, compulsory mobility and the operations of the law

Deportation is a multi-faceted phenomenon which has given rise to a field in its own right in the social sciences in the wake of what has been coined the ‘deportation turn’ that occurred from the 1990s (Coutin, 2015; Gibney, 2008). Later attempts to theorise and draw the ‘contours of deportation studies’ have pointed to the difficulty to conceptualise deportation practices and capture their multidimensionality and the competing rationales and antagonist practices that shape them (Lemberg-Pedersen, 2022). Scholars have approached deportation as a tool of border controls (Wong, 2015), through its effects on citizenship and sovereignty (De Genova et al., 2022), and on the limbo status of deportability it generates (De Genova, 2002; Lindberg, 2023). In recent years, deportation scholars have turned their attention to the concrete and material means of the enforcement of deportation (Drotbohm and Hasselberg, 2015; Walters, 2020). In that vein, deportation scholars have looked into discourses, tools and technologies that allow deportation practices to take place [Lemberg-Pedersen, (2022), pp.126–127]. Building on the metaphor of a ‘deportation machine’ popularised by Fekete (2005) this approach allows to capture ‘the heterogeneous actors, elements, and processes which subtend the involuntary movement of illegalised people’ [Walters, (2020), pp.238–239]. In this deportation machine, the shaping power of the law plays a crucial role: in order to carry out the deportation project, states need to create “a global deportation regime through which international norms and policies govern the admission and relocation of deportees to other states” [De Genova et al., (2022), p.853].

Despite the central role of laws and regulations for the functioning of the deportation machine, deportation is rarely analysed in legal studies as a global phenomenon of human mobility. As noted by Daniel Kanstroom, providing a “legally oriented conceptualization of deportation” is not an easy task “as the phenomenon has many different names, relates to national legal systems [...] in disparate ways, aims to achieve a wide variety of explicit and implicit goals, targets noncitizens (‘aliens’) of widely divergent statuses with diverse rights claims [...]” [Kanstroom, (2017), p.50]. The EU Returns Directive, an entire instrument dedicated to the project of deportation (Baldaccini, 2009; Moraru et al., 2020), gives deportation central stage but also circumscribes it to a narrow and specialised legal regime which only covers one of the forms of contemporary deportation practices and is only directed to third-country nationals. Beyond the Returns Directive, the legal

frameworks regulating the different forms of deportation overlap and cut across well-defined regimes of international, European and domestic law. Consequently, the broader phenomenon of deportation is often considered as a simple appendage to other legal regimes and knowledge production on deportation has been siloed along these well-defined disciplinary lines in legal studies. Labour migration agreements provide an example of deportation as legal appendage, as they also usually contain conditions for visa, recruitment and employment conditions, and return (Spiro, 2017). Even free movement regimes such as the freedom of movement of EU citizens contain exceptions that allow for the deportation (expulsion) of beneficiaries in certain cases, a practice that is increasingly scrutinised in legal scholarship (Brandariz, 2021; Coutts, 2020; Dagilyte et al., 2017). Under the European asylum system, the forced displacement (or ‘fair allocation’) of asylum-seekers between Member States is rarely framed as another form of deportation.

A common conceptualisation of deportation is to define it as the consequences of breaching immigration laws and thus as a mechanical consequence of an irregular or ‘illegal’ stay. This conceptualisation of deportation derives from the EU Returns Directive which creates this logical link in its Article 2(1). Defining deportation as a consequence of irregularity, however, raises a number of questions. First, research has shown that ‘illegality’ is a label that is empty of content and directly created by immigration laws. In the words of Catherine Dauvergne, “as the label ‘illegal’ has no content aside from being against the law, it accommodates similarly frequent changes” [Dauvergne, (2008), p.18]. Scholars have also illuminated how the conceptual space between legal and illegal migration is populated by grey areas, famously coined by Cecilia Menjivar as forms of ‘liminal legality’ [Menjívar, (2006), p.1002]. Second, and perhaps more importantly, deportation may serve a political objective. When following a prior criminal conviction or when based on a threat to nationality security, deportation is not necessarily related to an illegal stay. In such cases, it is the non-compliance with the deportation order that would potentially breach immigration laws and place the person in a situation of illegality. As states increasingly use deportation as a form of bordered penalty, merging administrative and criminal proceedings (Aas, 2014), the apparently logical link between irregular stay and deportation becomes increasingly muddled.

While it could be tempting to define deportation as a means for states to define membership to their political and social communities through territorial exclusion, as documented by scholarship on border criminology (Aas, 2014; Bosworth et al., 2024), such a definition still leaves aside other forms of deportation such as the transfer of asylum seekers or the practice of refusing access to the territory. As highlighted by Linda Bosniak in her normative analysis of the right to remain, deportation can be conceptualised as “one of the mechanisms the state employs to maintain control of the composition of its national political community”, but it is also used as “a strategy that allows the state to avoid the obligation that a person’s continued territorial presence would otherwise impose upon it” [Bosniak, (2007), p.402]. What all these deportation practices have in common, despite being based on different legal instruments and serving different purposes for the deporting state, is to rely on administrative or judicial decisions which enable states to lawfully (re)move migrants from their territory. In order to understand how the law regulates the lawful displacement of individuals across by borders by states, this study therefore follows the conceptualisation of deportation as the compulsory removal of non-citizens from the state under the operation of the law (De Genova et al., 2010).

The definition of deportation as compulsory mobility focuses on the issuance of an order to leave with which migrants must comply, rather than on the physical and coercive removal from the state. Doing so avoids the pitfalls of relying on the common and policy-oriented distinction between forced/voluntary returns which hides the denial of individuals' agency and the violence of the political project of deportation (Fekete, 2005; Sahin-Mencutek and Triandafyllidou, 2025). The broader definition of deportation as compulsory mobility instead encompasses any instance where a migrant has been required by law to leave the country, whether they do so within the period of 'voluntary departure' or are forcibly placed on a charter plane. Many scholars have indeed highlighted that framing deportation as 'voluntary return' only legitimises and normalises deportation 'under the pretence of free will' [De Genova et al., (2022), p.856]. With this definition of deportation as compulsory mobility the main criteria to differentiate between forced or voluntary is the denial by state authorities of migrants' autonomy and the imposition of a cross-border mobility. Doing so, other practices such as refusals of entry at the borders or forced transfers of asylum-seekers across Member States, which are not usually considered together with expulsion or return decisions, also come into view as different facets of deportation in that they are instances of compulsory mobility.

In the rest of the article, this study weaves together this wide definition of deportation as any form of compulsory mobility under the operation of the law with a global mobility law approach which foregrounds the empirical manifestation of the shaping power of the law. Such an approach considers that international mobility is shaped by an ensemble of global (ranging from supranational to subnational) norms which can be relied upon, ignored or contested by people on the move as well as border agents, state bureaucracies and judges. It is in the iteration between formal rules and practices of interpretation, contestation and/or circumvention that global mobility law shapes mobility patterns. The next section turns to the supranational level of European legal instruments to map the architecture of the European deportation regime and highlights its constitutive tension between facilitation of deportation and protection from deportation.

3 A European deportation regime in borderless Europe

When it comes to deportation, the law operates in intricate ways. The European deportation regime is a multi-dimensional legal ensemble. It is governed by norms interacting vertically between the national, regional and international level. It also operates in tension between norms specifically designed to facilitate deportation, and norms interpreted to limit states' discretion in deporting non-citizens. This section explores the tension between facilitation of and protection from deportation at the level of EU law and European human rights law.

3.1 Facilitation of deportation

At the European level, the regulation of deportation is decoupled between two different scenarios relating to the two approaches to human mobility enshrined in EU law (Goldner Lang, 2022). A first approach to human mobility is the mobility of EU citizens, where EU law operationalises a logic of belonging through the means of EU citizenship. EU citizenship confers to its beneficiaries, EU citizens and their family members, a wide array of mobility rights including a 'right to move and reside freely within the territory of

the Member States' (Recital 1 Citizens Rights Directive). The second approach to human mobility is one of 'migration flow management' for third-country nationals (Article 79§1, TFEU). Their right to move and reside in the territory of Member States is structured "around the distinction between legal and illegal migration" [Azoulai and De Vries, (2014), p.4] which differentiates between a logic of toleration based on labour market's needs and human rights duties (for highly skilled workers or asylum seekers for example), and a logic of deportation, which has become the main pillar of the so-called 'combat against illegal migration'.

These different approaches to human mobility entail different approaches to deportation and compulsory mobility. EU citizens and long-term residents benefit from heightened protection from deportation. The right of residence is the rule and deportation the exception. In such cases, deportation can still be used by Member States as a sanction to migrants breaching the social contract in circumstances strictly delineated by EU law (Brandariz, 2021; Coutts, 2020). In recent years, scholars have described a restrictive shift in the case law of the Court of Justice of the European Union (CJEU), which relies on EU criminal law to limit the protection from deportation enjoyed by mobile EU citizens (Mitsilegas, 2018), or validates the practice of relying on the criteria of a burden to social assistance to deport economically inactive EU citizens and their family members (Ristuccia, 2022). This trend testifies to something different from the logic of belonging, where expulsion of EU citizens would only be used exceptionally to sanction the breach of host Member State's social contract, and to something more akin to the logic of toleration governing the treatment of legally residing third country nationals.

Member States have more discretion to deny or revoke the rights of residence of third country nationals. This discretion is limited for third country nationals who are asylum seekers and refugees, and for third-country nationals who benefit from EU-based residence rights. However, once a third-country national finds themselves staying irregularly on a Member State territory, deportation becomes the rule and protection the exception. In these cases, EU law impulses a logic of deportation and facilitates deportation practices through the Returns Directive (Moraru et al., 2020). An important innovation of the Returns Directive for the logic of deportation was to create a logical link between the end or absence of a 'legal' stay and the deportation that must follow. The directive created for this purpose return decisions, administrative or judicial acts declaring that an individual's stay is illegal and imposing an obligation to return (Returns Directive art. 3§4). These return decisions are used to displace on average more than 94,000 third-country nationals every year².

As discussed in the previous section, compulsory mobility encompasses a more diverse range of practices than expulsion and return decisions only. The establishment of the Schengen area which lifted European internal borders in the 1990s was immediately met with concerns "in regards to the collective's external borders and the need to police irregular migrants and asylum seekers who, upon entry would otherwise be free to move among the member states as well" [Byrne and Gammeltoft-Hansen, (2024), p.166]. The creation of a borderless Europe without internal borders was made acceptable by its corollary: the reinforcement and securitization of external border control [Guild, (2021), p.386]. With the creation of Schengen thus came administrative measures allowing officials to lawfully prevent irregular border crossing and irregular stays as part of a broader legal framework for Member States to compulsorily move non-citizens from and within the borderless European territory.

Refusals of entry belong to this category of deportation which emerged in the context of border controls. Every year, around 135,000 third-country nationals are refused entry at the external border of the European Union. Refusals of entry are administrative measures allowing Member States to lawfully refuse entry in the territory. Refusals of entry have to be substantiated and can be appealed by the third-country national, though the appeal does not suspend the effect of the decision (ie: it does not grant a temporary right to remain on the territory) (Schengen Borders Code, Article 14). Concretely, if individuals who are refused entry arrived at the border with a carrier, the carrier is instructed to send them back to the country of departure, their country of origin or any other country where they are admissible (Schengen Borders Code, Annex V Part A §2). Being able to refuse entry in the territory is consubstantial to the very idea of border controls and not often associated with deportation. Indeed, refusal of entry is often presented as belonging to a different side of the ‘fight’ against irregular migration than deportation. Under this view, refusals of entry belong to the realm of border control – preventing irregular migrants from entering the territory – while deportation belongs to the realm of immigration control – ensuring that irregular migrants in the territory are removed (Charaudeau Santomauro, 2022).

The problem with maintaining a strict analytical distinction between refusal of entry and deportation is that it gives more weight to the legal fiction of non-entry. This legal fiction creates an artificial distinction between physical and legal entry in the territory for the purpose of immigration law and is used to justify ‘watering-down’ the substantive and procedural guarantees for migrants [Maillet, (2021), p.72; Molinari, 2022]. With the adoption of the European Pact on Migration and Asylum in 2024, the fiction of non-entry has been significantly extended through the mandatory ‘asylum border procedure’ which can take up to three months during which applicants are not allowed to (legally) enter the state’s territory despite being held (physically) in the territory (Rondine, 2024). In such cases, and particularly so when third-country nationals are kept in administrative detention on the territory for several days, refusals of entry become in all but in name (and legal safeguards) return decisions.

The third type of deportation concerns the forced transfer of asylum seekers between EU Member States, which came to be known as ‘Dublin transfers’. The Dublin convention, adopted by European States in 1990, was replaced by the Dublin regulations I and II in 2003 and 2013 and finally by the Asylum and Migration Management Regulation (AMMR) in 2024. It lays down criteria to allocate the responsibility of processing asylum seekers’ requests in Europe. By organising the (compulsory) transfer of asylum seekers between Member States, the AMMR aims to prevent and control secondary movement of asylum seekers across Member States. When asylum seekers lodge an application for protection in a Member State if it appears that they fulfil one of the Dublin criteria, the Member State sends a request to the responsible Member State for the transfer of the asylum seeker. In practice, the authorities mostly rely on the country of first entry to determine the Member State responsible of the asylum request (Battjes and Brouwer, 2015; Garrett and Barrett, 2021). Dublin transfers are often “portrayed as a matter of mere allocation for bureaucratic purposes” [Costello, (2016), p.36], yet they forcibly displace around on average 16,000 asylum seekers every year. The lawfulness of Dublin transfers is premised on the principle of mutual trust which assumes that “membership of the European Union means that all EU Member States are fully compliant with fundamental rights norms” [Mitsilegas, (2012), p.322]. The presumption of trust between Member States leading to the automaticity of the transfer was challenged

before the European Court of Human Rights (ECtHR) and the CJEU, whose rulings contributed to open safeguards against compulsory transfers (Costello, 2016; Xanthopoulou, 2018). Asylum seekers can therefore rely on substantive and procedural safeguards against their transfer.

The European deportation regime does more than facilitate deportation practices, it also contains the means to set limits to states' deportation discretion. International, European and national fundamental rights apply horizontally to the different types of deportation measures and open up a "space for legal claims for migrant justice" [Cornelisse and Moraru, (2022), p.129].

3.2 *Protection from deportation*

In their latest versions, all the deportation measures regulated in EU law (refusals of entry, Dublin transfers, returns decisions) contain provisions stating that the deportation should be carried out in accordance with human rights and the right to asylum. This relates to the gradual development since the 1990s of human rights safeguards to deportation in European courts. An important part of the migration case law of supranational human rights courts, and particularly the European Court of Human Rights (ECtHR), deals with deportation cases. They are cases where an individual under a deportation measure turns to the court to halt the deportation. Consequently, human rights courts have been called to delineate the extent of the protection afforded by human rights to migrants under the threat of deportation. Two main substantive safeguards have been developed in that regard: the right not to be subjected to inhumane and degrading treatment (Article 3 ECHR) and the right to a private and family life (Article 8 ECHR), while the development of a procedural right to an effective remedy (Article 13 ECHR) has positioned national judges as central actors in deportation.

Most of the asylum cases at the European Court of Human Rights are deportation cases, including the first asylum case to be decided by the court in 1991 (*Cruz Varas and others v. Sweden*, 1991). Because there is no right to asylum contained in the European Convention on Human Rights (ECHR), the control of the court is triggered by the pending deportation, not by the refusal of asylum itself (*Vilvarajah*, 1991, §102–103). The same goes for all types of deportations. Since the ECHR does not contain provisions directly protecting the right to enter or remain in a given territory, it is only when a state takes action to actually deport a non-citizen that a human rights violation might occur, and it is only then that the human rights court might look at the conformity of the deportation order with these existing human rights safeguards. In this sense, the protection afforded by human rights courts can be characterised as a negative protection whereby migrants' deportation remains decorrelated from its logical counterpart, their regularisation.

Human rights safeguards apply horizontally regardless of the type of deportation measure concerned, and the purpose and rationale behind the deportation decision. The different safeguards, however, do not apply in the same way. The right not to be subjected to inhuman and degrading treatment (Article 3) protects migrants from compulsory mobility in relation to their country of destination, where they are sent back. The right to a private and family life (Article 8) protects them in relation to the country of origin, where they are staying. The safeguard to deportation based on Article 3 ECHR is a well-known jurisprudential creation by which the court read in the prohibition of torture and ill-treatment an absolute protection from *refoulement*, thus re-writing in a human

rights grammar the protection against refoulement enshrined in Article 33 of the Refugee Convention (*Soering v. the United Kingdom*, 1989). The second important human rights safeguard against deportation is the protection derived from Article 8 ECHR. These are cases in which non-citizens, either regularly or irregularly residing in the territory, have formed ties and created a family in the host country to the extent that deporting them would constitute a violation of their right to a private and family life or to that of their residing dependents. Such cases differ from cases of non-refoulement because the right to a private and family life is a qualified right and not an absolute right. This means that a deportation may be found to infringe on an individual's private and family life and yet not be a violation of Article 8 if it was proportional to its aim.

The line of case law around the protection of seriously ill migrants from deportation illustrates how human rights safeguards apply horizontally across the different types of deportation orders. In the case of *D. v. the United Kingdom* in 1997, the ECtHR ruled that the Convention protected migrants from deportation when they suffered from an illness which could not be treated in their country of origin. The applicant had been arrested at the airport in possession of cocaine, was refused leave to enter in the UK and was later convicted by a British court to six years in prison where he was diagnosed with AIDS. Upon release from prison, the authorities placed him in detention pending his deportation on the ground that, despite being physically in the UK, he had never been allowed to enter and therefore had to be removed (§25). In this deportation, based on the fiction of non-entry, the court ruled that in view of the applicant's exceptional circumstances, "the implementation of the decision to remove [the applicant] would amount to inhuman treatment" (*D.v. the United Kingdom*, 1997 §53). The safeguard created in *D. v. the United Kingdom* was a very controversial solution, and the ECtHR circumscribed its application in subsequent cases, by ruling every other cases raising the same questions as inadmissible (for e.g., *Karara v. Finland*, 1998, *S.C.C. v. Sweden*, 2000). In 2008, a Grand Chamber judgment in *N. v. the United Kingdom* confirmed the very high threshold for the applicability of the protection for seriously ill migrants which became known as the 'deathbed doctrine' [Spalding, (2022), p.143]. In that case, the applicant was subject to a deportation order that followed an unsuccessful asylum application. After years of controversy over the deathbed doctrine, the ECtHR finally revised its position in the case of *Paposhvili v. Belgium* in 2016. The facts of this case illustrate the continuity between the different forms of deportation. The applicant was a Georgian national who had been living irregularly in Belgium for 14 years and had been ordered to leave first under a Dublin transfer in 1999, which was not executed and was replaced by a deportation order based on his criminal conviction in 2007, again not executed, and followed by an order to leave with immediate effect which triggered the control of the ECtHR. Despite the different legal frameworks in which each deportation measure is embedded, the protective dimension of the deportation regime brings into light what all these measures have in common: that of being instruments of compulsory mobility.

3.3 *A constitutive tension*

The two dimensions of the European deportation regime, facilitation of and protection from deportation, mirror the common distinction in global migration law between the migration management paradigm and human rights paradigm (Spiro, 2017). This tension between facilitation of deportation and protection of deportable migrants is in fact constitutive of the deportation regime and is deployed in each deportation case as the

European deportation agenda is routinely enforced through the large-scale issuance of *individual* deportation orders. In this context, and through the interpretive work of the two European courts which created what can be likened to a right of access to national judges in deportation cases, national courts have become major actors in the enactment of the European deportation regime.

The ECtHR relied on Article 13 ECHR and the right to an effective remedy which guarantees that anyone with an arguable claim that one of their rights protected by the Convention has been violated can seek a remedy before a competent national authority (*Klass and others v. Germany*). Article 47 of Charter of Fundamental Rights of the European Union (EU Charter) goes further than the ECHR, since it guarantees “the right to an effective remedy before a tribunal” to anyone “whose rights and freedoms guaranteed by the law of the Union are violated”. The European Court of Justice (ECJ) confirmed in the context of a return decision that the right to an effective remedy required “the Member States to guarantee, at a certain stage of the proceedings, the possibility for the third-country national concerned to bring any dispute relating to a return decision adopted by an administrative authority before a court” (*FMS and others*, 2020, §129).

Both European courts differentiate between the type of deportation measure and the specific safeguard relied on by applicants to determine whether the remedy should have a suspensive effect, with the consequence of encouraging complex domestic litigative maps. The ECtHR considers that complaints concerning risks of treatments contrary to Article 3 in the country of return, as well as claim concerning the right to life of the applicant (Article 2) and the prohibition of collective expulsions of aliens (Article 4 protocol 4) require access to a suspensive appeal at the domestic level (*De Souza Ribeiro v. France*, 2012, §82, *Hirsi Jamaa and others v. Italy*, 2012, §206). Building on the ECtHR case law, the ECJ also ruled that remedies against a return decision issued after (or together with) the rejection in first instance of an asylum decision had to be fully suspensive of all the effects of the deportation (*Abdida*, 2014, *Gnandi*, 2018). The requirements are different when the complaint is based on Article 8 ECHR, where the ECtHR held that “where expulsions are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect” (*De Souza Ribeiro v. France*, 2012, §83).

Through the interpretive work of both European courts, the development of the right to an effective remedy in deportation cases has positioned domestic judiciaries as central actors in the European deportation regime, having to reconcile the deportation logic of instruments such as the Returns Directive or the Schengen Borders Code with the protective potential of European and international human rights law and certain protective EU law migration statuses [for a similar argument on the role of national judges in adjudicating the Returns Directive, see: [Cornelisse, (2020), pp.59–60]]. The next section thus turns to the everyday adjudication of individual deportation measures in French lower courts, where judges are called on to give meaning and reconcile the tension between the facilitation and the protection of migrants’ rights.

4 The deportation regime operating in French lower courts

In this last section, the analysis takes France as a local empirical anchor to understand how the supranational deportation regime operates in practice in lower administrative courts. Of course, courts are not the only site of enactment of the European deportation

regime. Compulsory mobility is set in motion on the ground by the state bureaucratic apparatus and border guards, who have been the object of heightened scholarly inquiry in recent years (Eule et al., 2019; Soysüren and Nedelcu, 2022). Research on the role of national courts in enacting deportation and deportability often focuses on the impact and influence in the norm-making process of higher and apex domestic courts (Imbert, 2022). Yet, to understand how the deportation regime structures compulsory mobility we need not only consider the formal regulations (who can be lawfully deported, to where and how) stemming from the European deportation regime and its interpretation in national apex courts, but also the concrete and everyday practice of deciding that a given deportation order is lawful as it unfolds in lower courts. This study therefore focuses on French lower administrative courts (*tribunaux administratifs*) which play a key role in the enforcement of the deportation regime as they are called on to rule on the legality of around 50,000 deportation measures every year.

4.1 Methods and data

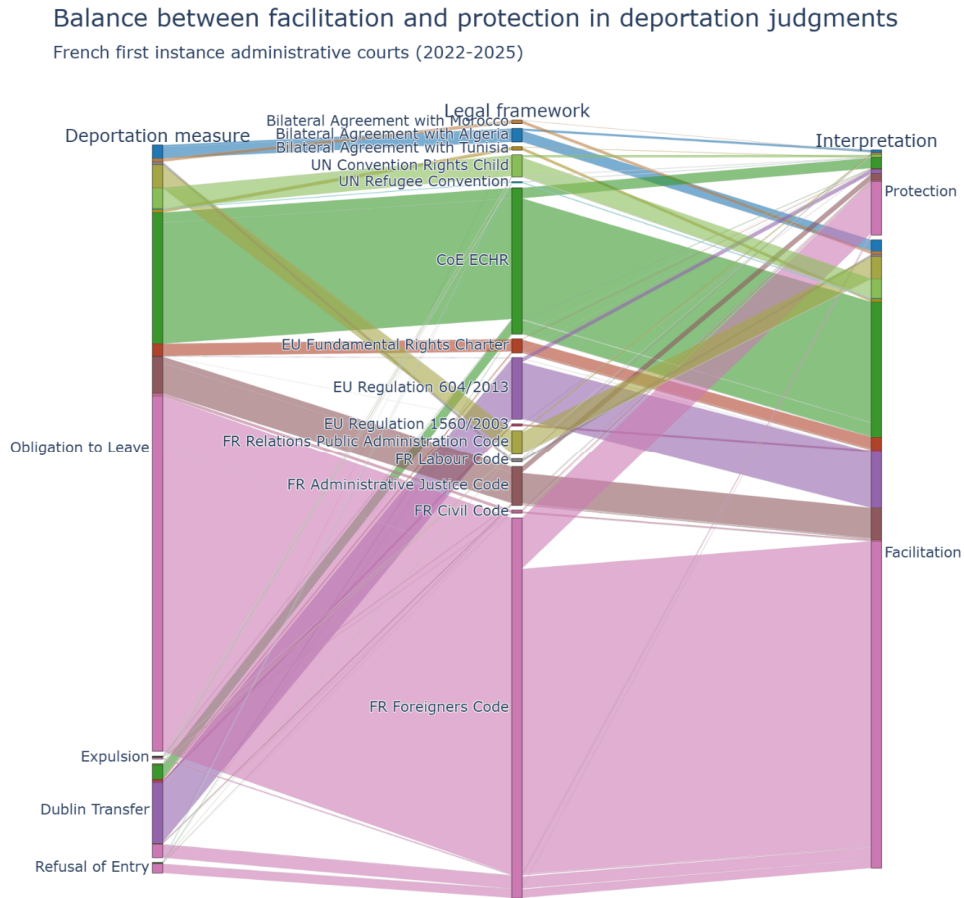
This empirical section is based on a dataset of 130,501 deportation judgments issued by French lower administrative courts between June 2022 and June 2025 (Lamé, 2025). By ‘deportation judgments’ this study means appeals lodged by foreign nationals against different types of deportation measures: obligations to leave French territory, expulsion orders, Dublin transfers, and refusals of entry into the territory (divided into two categories: refusals of entry based on the Schengen border code and refusals of entry to lodge an asylum request)³.

The full text of the judgments is published online and in open data by the Council of State along with metadata such as the name of the tribunal and date of the judgment. Using rule-based matching methods, the analysis further extracted a number of variables of interest, which include: the type of deportation measure appealed, the outcome of the judgment and the legal frameworks of the judgment. For the purpose of this article, only the deportation judgments which gave rise to a decision on the merits were kept, thus excluding judgments where the outcome was to transfer the case to another competent tribunal or where the case was struck out of the list for instance. Each extracted legal provision was automatically processed to obtain the type of law (international law, EU law, Council of Europe convention, bilateral agreement, French law), the law cited (for instance European Convention on Human Rights or French foreigners code) and the specific article cited. This study removed from the analysis legal provisions governing the right to legal aid in French administrative law. Migrants contesting a deportation order are almost systematically entitled to legal aid and this legal provision is therefore not only overrepresented in deportation judgments but is also overwhelmingly accepted by the court.

In French administrative adjudication, legal reasoning is built around syllogisms, one for each argument made by the applicant (in French, *moyens de légalité*). In deportation judgments, each syllogism therefore typically opens with the legal provision used by the claimant to sustain their claim to non-deportability (major premise), is followed by one or more paragraphs where the legal provision is interpreted and applied to the facts of the case (minor premise) and ends with the conclusion of the syllogism in which the legal argument is either accepted or rejected by the court. Relying on semi-automated extraction with regular expressions (regex), the analysis identified the different syllogisms built around the legal provisions cited and their conclusions. When a claim

based on a legal provision was accepted by the court, this study coded that specific legal provision as being interpreted in a *protective* way. On the contrary, when a claim based on a legal provision was rejected by the court, that legal provision was coded as being interpreted *restrictively*. The extraction of the conclusion worked for 90% of the legal provisions, in 10% of the cases the algorithm was not able to extract whether the argument was accepted or rejected. The legal provisions whose conclusion could not be extracted were removed from the rest of the analysis.

Figure 1 Representation of the legal frameworks of deportation judgments in French lower courts (see online version for colours)



Notes: The alluvial diagram represents, for each type of deportation measure, the main laws cited in the judgments (without the specific article) as well as the interpretation of that law by the courts (facilitation of deportation or protection from deportation). The figure only contains the most cited laws (appearing in more than 500 judgments). The unit of analysis is the legal provision (law and article) and the results were aggregated by type of deportation, law and interpretation (protection/facilitation).

The analysis found a total of 3255 different legal provisions cited in the deportation judgments. In 88% of the cases, the legal provisions were interpreted restrictively, while

in 12% of the cases the legal provisions were interpreted protectively. Checking the reliability of the extraction of the conclusion on a random sample of 100 legal provisions, this study found only 2 instances where a restrictive interpretation was coded as protective or vice-versa.

The aggregated results are presented in Figure 1 which represents, for each type of deportation measure, the main laws cited in the judgments (without the specific article) as well as the interpretation of that law by the courts. For readability purposes, only the most cited laws appear in the figure (cited in more than 500 judgments). The unit of analysis is the legal provision (law and article) and the results were aggregated by type of deportation, law and interpretation (protection/facilitation). This alluvial diagram illustrates the diversity of norms that judges rely on when they judge deportation cases, and how they concretely mediate the impact of the deportation regime on deportation practices and reconcile the tension at the heart of the European deportation regime.

4.2 Regime in translation

Integrating the national level in the European deportation regime brings another layer of legal complexity, as the national translation of the supranational regime builds on existing administrative practices and legal frameworks. The deportation arsenal in French law largely mirrors the different forms of deportation in the European deportation regime, but with some specificities. Because the European deportation regime was developed in parallel to existing domestic regulations of deportation practices, its translation in domestic legal systems did not erase existing legal frameworks around national deportation practices.

The overwhelming majority of deportation measures appealed in French courts are obligations to leave French territory, making up 87% of the deportation judgments in French lower courts. Obligations to leave were introduced in 2006, two years prior to the adoption of the Returns Directive. These eventually replaced the measures of removals to the border which had sanctioned irregular stays since 1981, and co-existed with the historical expulsion measure which sanctioned threats to public order since 1938. With the transposition of the Directive into French law, obligations to leave became returns decision in the meaning the Directive but only when issued against non-EU citizens. The same administrative measure when taken against non-EU citizen is a decision implementing EU law, and a decision based on French law when taken against EU citizens. Expulsion orders are still used by French authorities but represent only a marginal proportion of deportation judgments in tribunals (around 0.5%).

The second most frequent deportation measure appealed in tribunals are Dublin transfers making up 11% of the total of deportation judgments in lower courts. These are the only deportation measure in the French deportation arsenal straightforwardly based on EU law. Nevertheless, the introduction of these procedures required a constitutional revision to ensure that France could conclude agreements with countries that have the same level of engagement in matters of asylum and human rights protection, without depriving French authorities the ability to grant asylum to a foreigner who asks for French protection (Law n° 93-1256 of 25 November 1993).

Refusals of entry in French law were created in 1981, almost 10 years before their inscription in Article 14 of the Schengen Convention (Law n° 81-973 of 29 October 1981, Article 1). With the entry into force of the Schengen Convention, it became possible to appeal against a refusal of entry before a judge, and following an adverse

judgment from the European Court of Human Rights in 2007 (*Gebremedhin [Gaberamadhien] v. France*), refusals of entry issued to asylum seekers could be appealed with automatic suspensive effect. Consequently, refusals of entry at the border were split into two different types of deportation measures. The first one, based on the Schengen convention, does not open a right to a suspensive appeal. The second one, based on human rights requirements where foreigners asked for a leave to enter to lodge an asylum request, does open a right of suspensive appeal. These deportation measures represent respectively 0.2 and 2% of deportation judgments in lower courts.

The French case illustrates how the domestic translation of the European deportation regime creates a complex arsenal of tools for national authorities to lawfully and compulsorily displace non-citizens across borders. When individuals challenge the legality of their deportation in courts, the global nature of the European deportation regime re-surfaces and judges have to routinely navigate the multilevel regime and reconcile the tension between facilitation of and protection from deportation.

4.3 *Regime in (inter)action*

The deportation regime as it appears in French lower courts is a truly global legal regime where international law, regional law, bilateral agreements and domestic law interact. Each type of deportation measure is embedded in its own legal framework, yet they are all governed by laws stemming from the supranational, regional and national level. Dublin transfers for instance have a clearly delineated legal framework built around the Dublin III regulation, which is the most common legal source in these judgments (Figure 1). But Dublin transfers also cite the French foreigners' code, the ECHR, the French code of administrative justice, the EU Charter, the UN Convention on the Rights of the Child (CRC), and also, though more rarely, the French Constitution or the Asylum Procedures Directive, etc. The most often cited legal source in all the other types of deportation measures is the French foreigners' code (*CESEDA*). It is important to keep in mind that EU Directives do not have direct effect and need to be transposed into French law. Therefore, citations of the foreigners' code also include references to transposed provisions of EU law, particularly in the case of obligations to leave which are 'return decisions' for the meaning of the Returns Directive. The European Convention of Human Rights is the second most cited source, and one of the most cited legal sources for all the types of deportation measures (Figure 1).

The most frequently cited legal provisions in deportation judgments are two human rights provisions from the ECHR. Article 8 ECHR represents 66% of the citations to the ECHR and is cited in 43% of the total of deportation judgments, and Article 3 ECHR represents 27% of all the citations to the ECHR and is cited in 15% of the total of deportation judgments. The CRC also appears as an important safeguard to deportation, essentially through its Article 3(1) which protects the best interest of the child and is cited in 8% of the deportation judgments. Although 95% of the citations to the CRC appear in obligations to leave judgments, the CRC is also cited in Dublin transfers judgments, expulsions and (very exceptionally) in refusals of entry judgments. Similarly, the EU Charter while cited mostly in obligations to leave, also appears in some Dublin transfer, expulsion and refusals of entry. The horizontal application of human rights safeguards to the different forms of deportation, discussed *in abstracto* in the previous section, is therefore found *in concreto* in everyday deportation judgments.

The European deportation regime thus emerges as not simply an abstract supranational regime, but a concrete multi-level mobility regime where the regional dimension interacts with international, bilateral and national rules. These rules are mobilised in migrants' claims to non-deportability and applied by lower courts judges in each individual deportation case. As judges decide whether to lean towards facilitation of or protection from deportation, they also decide who gets to stay on the territory, who can be removed, when and to where.

Studying the outcome of migrants' claims to non-deportability in deportation judgments reveals that judges regularly weigh in to counter administrative practices by interpreting protectively human rights safeguards to deportation, as well as provisions laying down the conditions for the lawful deportation of non-citizens. There is however no provision, even among human rights safeguards, which appears to be interpreted predominantly in a protective way, and the annulment or suspension of deportation remains an exception rather than the rule. Arguments to non-deportability built around Article 8 ECHR are interpreted in a protective way in 9% of the cases, while arguments built around Article 3 ECHR are interpreted in a protective way in less than 2% of the cases. Furthermore, legal instruments adopted to facilitate deportation can be interpreted by national judges to protect migrants and limit states' discretionary power. For instance, arguments to non-deportability built around article L.611-1 of the foreigners' code transposing the Returns Directive are interpreted to facilitate the deportation in 87% of the cases, which means that they are interpreted in a way that protects migrants from deportation in 13% of the cases.

Lower court judges, positioned at the frontline of deportation enforcement, shape the patterns of compulsory mobility across national borders. They do so by reconciling, in each individual case, the tension between facilitation and protection inherent to the European deportation regime. The analysis further shows that in deportation adjudication the balance between facilitation and protection tends to tilt towards the former, as lower courts judges in most cases confirm the lawfulness of the deportation. They remain nonetheless a crucial step to understand how this deportation regime operates in practice and how the line is constantly contested and re-drawn between facilitation of deportation and protection of migrants.

5 Conclusions

This article conceptualises deportation as compulsory mobility of individuals across borders through the operation of the law. Delving into the multilevel and interacting legal frameworks regulating this form of mobility, this article shows that deportation practices are regulated by a multi-dimensional European deportation regime which exists in a series of tensions. The first tension arises between the vertical integration of European and national law and the supranational horizontal human rights protection from deportation. The second tension arises between the aim of facilitation of compulsory mobility which underpins most of the instruments regulating deportation, and the protection from compulsory mobility which is linked to the development of human rights safeguards to deportation. The gradual development of these human rights safeguards opened opportunities for migrants to challenge the legality of individual deportation measures before national courts. Therefore, the task of reconciling the tensions of the European deportation regime falls primarily to national judiciaries. In the context of

deportation adjudication in French lower courts, the global nature of the European deportation regime is reflected in the legal frameworks of everyday deportation judgments. In lower courts, the tension between protection and facilitation at the heart of the deportation regime is often reconciled at the expense of migrants' protection.

In conclusion, a global regime such as the European deportation regime is given its form in its local enactments. National (lower) courts are particularly important sites for the enactment of the deportation regime. Investigating the choices made locally between the different dimensions of this European deportation regime in the everyday adjudication of claims to non-deportability allows to understand how the law operates to shape compulsory mobility patterns.

Acknowledgements

This article builds on research conducted for my PhD dissertation. This research is funded by the Danish National Research Foundation Grant no. DNRF169 and conducted under the auspices of the Danish National Research Foundation's Center of Excellence for Global Mobility Law (MOBILE).

Declarations

The author declares that they have no conflicts of interest.

References

- Aas, K.F. (2014) 'Bordered penalty: precarious membership and abnormal justice', *Punishment & Society*, Vol. 16, No. 5, pp.520–541, DOI: 10.1177/1462474514548807.
- Akoka, K. (2020) *L'asile et l'exil, une histoire de la distinction réfugiés/migrants*, La Découverte, Paris.
- Azoulai, L. and de Vries, K. (Eds.) (2014) *EU Migration Law: Legal Complexities and Political Rationales*, 1st ed., Collected Courses of the Academy of European Law, Oxford.
- Baldaccini, A. (2009) 'The return and removal of irregular migrants under EU law: an analysis of the returns directive', *European Journal of Migration and Law*, Vol. 11, No. 1, pp.1–18.
- Battjes, H. and Brouwer, E. (2015) 'The Dublin regulation and mutual trust: judicial coherence in EU asylum law', *Review of European Administrative Law*, Vol. 8, No. 2, pp.183–214.
- Bosniak, L. (2007) 'Being here: ethical territoriality and the rights of immigrants why citizenship?', *Theoretical Inquiries in Law*, Vol. 8, No. 2, pp.389–410.
- Bosworth, M., Franko, K., Lee, M. and Mehta, R. (Eds.): (2024) *Handbook on Border Criminology*, 1st ed., Edward Elgar Publishing Limited, Cheltenham, UK.
- Brandariz, J.A. (2021) 'The removal of EU nationals: an unaccounted dimension of the European deportation apparatus', *Central and Eastern European Migration Review*, Vol. 10, No. 1, pp.13–33, DOI: 10.17467/ceemr.2021.06.
- Byrne, W.H. and Gammeltoft-Hansen, T. (2024) 'Untangling the legal infrastructure of Schengen', *European Papers – A Journal on Law and Integration*, Vol. 9, No. 1, pp.157–177, DOI: 10.15166/2499-8249/751.
- Charaudeau Santomauro, B. (2022) *The Legal Production of the Margin: Migrants Between Border and Territory*, *Cahiers de l'EDEM [Anciennement: Newsletter EDEM]* [online] <https://hal.science/hal-03778187> (accessed 7 January 2026).

- Chetail, V. (2016) 'Is there any blood on my hands? deportation as a crime of international law', *Leiden Journal of International Law*, Vol. 29, No. 3, pp.917–943, DOI: 10.1017/S0922156516000376.
- Cornelisse, G. (2020) 'The scope of the return directive: how much space is left for national procedural law on irregular migration?', in Moraru, M., Cornelisse, G. and De Bruycker, P. (Eds.): *Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union*, Hart Publishing, Oxford, UK, DOI: 10.5040/9781509922987.
- Cornelisse, G. and Moraru, M. (2022) 'Judicial interactions on the European return directive: shifting borders and the constitutionalisation of irregular migration governance', *European Papers – A Journal on Law and Integration*, Vol. 7, No. 1, pp.127–149, DOI: 10.15166/2499-8249/551.
- Costello, C. (2016) *The Human Rights of Migrants in European Law*, Oxford University Press, Oxford.
- Coutin, S.B. (2015) 'Deportation studies: origins, themes and directions', *Journal of Ethnic and Migration Studies*, Vol. 41, No. 4, pp.671–681, DOI: 10.1080/1369183X.2014.957175.
- Coutts, S. (2020) 'A contingent citizenship – union citizenship and expulsion', in Mantu, S., Minderhoud, P. and Guild, E. (Eds.): *EU Citizenship and Free Movement Rights*, pp.243–264, Brill | Nijhoff, DOI: 10.1163/9789004411784_012.
- Crawley, H. and Skleparis, D. (2018) 'Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe's 'migration crisis'', *Journal of Ethnic & Migration Studies*, Vol. 44, No. 1, pp.48–64, DOI: 10.1080/1369183X.2017.1348224.
- Dagilyte, E., Evans, M. and Guild, E. (2017) *Expulsion and EU Citizenship* [online] <https://repository.uhn.ru.nl/handle/2066/179152> (accessed 7 January 2026).
- Dauvergne, C. (2008) *Making People Illegal: What Globalization Means for Migration and Law*, Cambridge University Press, Cambridge, DOI: 10.1017/CBO9780511810473.
- De Genova, N. (2002) 'Migrant 'illegality' and deportability in everyday life', *Annual Review of Anthropology*, Vol. 31, No. 1, pp.419–447, DOI: 10.1146/annurev.anthro.31.040402.085432.
- De Genova, N., Peutz, N., Walters, W. and Cornelisse, G. (2010) *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, Duke University Press, New York, USA.
- De Genova, N., Tazzioli, M., Aradau, C., Bhandar, B., Bojadzjev, M., Cisneros, J.D., Genova, N.D., Eckert, J., Fontanari, E., Golash-Boza, T., Huysmans, J., Khosravi, S., Lecadet, C., Rojas, P.M., Mazzara, F., McNevin, A., Nyers, P., Scheel, S., Sharma, N. and Walters, W. (2022) 'Minor keywords of political theory: migration as a critical standpoint', *Environment and Planning C*, Vol. 40, No. 4, pp.781–875, DOI: 10.1177/2399654420988563.
- Drotbohm, H. and Hasselberg, I. (2015) 'Deportation, anxiety, justice: new ethnographic perspectives', *Journal of Ethnic and Migration Studies*, Vol. 41, No. 4, pp.551–562, DOI: 10.1080/1369183X.2014.957171.
- Eule, T.G., Borrelli, L.M., Lindberg, A. and Wyss, A. (2019) *Migrants Before the Law: Contested Migration Control in Europe*, Springer International Publishing, London, UK, DOI: 10.1007/978-3-319-98749-1.
- Fekete, L. (2005) 'The deportation machine: Europe, asylum and human rights', *Race & Class*, Vol. 47, No. 1, pp.64–78, DOI: 10.1177/0306396805055083.
- Garrett, R. and Barrett, N. (2021) 'Dublin III in practice: synthesizing a framework for European non-refoulement cases at the human rights committee', *Journal of Human Rights Practice*, Vol. 13, No. 2, pp.250–269, DOI: 10.1093/jhuman/uhab032.
- Gibney, M.J. (2008) 'Asylum and the expansion of deportation in the United Kingdom', *Government and Opposition*, Vol. 43, No. 2, pp.146–167, DOI: 10.1111/j.1477-7053.2007.00249.x.
- Gibney, M.J. (2013) 'Is deportation a form of forced migration?', *Refugee Survey Quarterly*, Vol. 32, No. 2, pp.116–129.

- Goldner Lang, I. (2022) 'Freedom of movement of EU citizens and mobility rights of third-country nationals: where EU free movement and migration policies intersect or disconnect?', in Tsourdi, E. and De Bruycker, P. (Eds.): *Research Handbook on EU Migration and Asylum Law*, Edward Elgar Publishing Limited, Cheltenham, UK.
- Guild, E. (2021) 'Schengen borders and multiple national states of emergency: from refugees to terrorism to COVID-19', *European Journal of Migration and Law*, Vol. 23, No. 2, DOI: 10.1163/15718166-12340111.
- Hamlin, R. (2021) *Crossing: How We Label and React to People on the Move*, Stanford University Press, Stanford, California, DOI: 10.1515/9781503627888.
- Imbert, L. (2022) 'Endorsing migration policies in constitutional terms: the case of the French constitutional council', *European Journal of Legal Studies*, Special Issue – Adjudicating Migrants' Rights: What Are European Courts Saying?, pp.63–95, DOI: 10.2924/EJLS.2022.003.
- Kanstroom, D. (2017) 'Deportation as a global phenomenon: reflections on the ILC draft articles on the expulsion of aliens', *Harvard Human Rights Journal*, Vol. 30, pp.49–76.
- Kmak, M. (2024) *Law, Migration, and Human Mobility: Mobile Law*, Taylor & Francis, London, UK.
- Lamé, A. (2025) 'Réflexions sur la production routinière des jugements d'éloignements par les juges du fond: approche pragmatique et méthodes computationnelles', *Amplitude du Droit*, Vol. 4, DOI: 10.56078/amplitude-droit.699.
- Lemberg-Pedersen, M. (2022) 'The contours of deportation studies', in King, R. and Kuschminder, K. (Eds.): *Handbook of Return Migration*, Edward Elgar Publishing, Cheltenham, UK, DOI: 10.4337/9781839100055.00018.
- Lindberg, A. (2023) *Deportation Limbo*, Manchester University Press, Manchester, UK, DOI: 10.7765/9781526160881.
- Maillet, P. (2021) 'Nowhere countries: when states use extra-territoriality at home to circumvent legal, human and refugee rights', in Mark, G., Erdem, T.G., Markus, K. and Wouter, V. (Eds.): *The Routledge Handbook on Extraterritorial Human Rights Obligations*, 1st ed., pp.65–76, Routledge.
- Menjívar, C. (2006) 'Liminal legality: Salvadoran and Guatemalan immigrants' lives in the United States', *American Journal of Sociology*, Vol. 111, No. 4, pp.999–1037, DOI: 10.1086/499509.
- Mitsilegas, V. (2012) 'The limits of mutual trust in Europe's area of freedom, security and justice: from automatic inter-state cooperation to the slow emergence of the individual', *Yearbook of European Law*, Vol. 31, No. 1, pp.319–372, DOI: 10.1093/yel/yes023.
- Mitsilegas, V. (2018) 'European criminal law and the dangerous citizen', *Maastricht Journal of European and Comparative Law*, Vol. 25, No. 6, pp.733–751, DOI: 10.1177/1023263X18821276.
- Molinari, C. (2022) 'The borders of the law: legal fictions, elusive borders, migrants' rights', *Politics and Governance*, Vol. 10, No. 2, pp.239–245, DOI: 10.17645/pag.v10i2.4968.
- Moraru, M., Cornelisse, G. and De Bruycker, P. (Eds.) (2020) *Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union*, Hart Publishing, Oxford, UK, DOI: 10.5040/9781509922987.
- Ramji-Nogales, J. (2017) 'Moving beyond the refugee law paradigm', *American Journal of International Law*, Vol. 111, pp.8–12, DOI: 10.1017/aju.2017.9.
- Ramji-Nogales, J. and Spiro, P.J. (2017) 'Introduction to symposium on framing global migration law', *American Journal of International Law*, Vol. 111, pp.1–2, DOI: 10.1017/aju.2017.14.
- Ristuccia, F. (2022) '"Cause tramps like us, baby we were born to run": untangling the effects of the expulsion of 'undesired' Union citizens', *Common Market Law Review*, Vol. 59, No. 3, pp.889–914.
- Rondine, F. (2024) 'The fiction of non-entry in European migration law', *European Journal of Migration and Law*, Vol. 26, DOI: 10.1163/15718166-12340181.

- Sahin-Mencutek, Z. and Triandafyllidou, A. (2025) 'Coerced return: formal policies, informal practices and migrants' navigation', *Journal of Ethnic and Migration Studies*, Vol. 51, No. 2, pp.483–500, DOI: 10.1080/1369183X.2024.2371209.
- Soysüren, I. and Nedelcu, M. (2022) 'European instruments for the deportation of foreigners and their uses by France and Switzerland: the application of the Dublin III regulation and Eurodac', *Journal of Ethnic and Migration Studies*, Vol. 48, No. 8, pp.1927–1943, DOI: 10.1080/1369183X.2020.1796278.
- Spalding, A. (2022) *The Treatment of Immigrants in the European Court of Human Rights: Moving Beyond Criminalisation*, Bloomsbury Publishing Plc., London, UK.
- Spiro, P.J. (2017) 'The possibilities of global migration law', *American Journal of International Law*, Vol. 111, pp.3–7, DOI: 10.1017/aju.2017.10.
- Walters, W. (2020) 'Technologies of deportation', in Adey, P., Bowstead, J.C., Brickell, K., Desai, V., Dolton, M., Pinkerton, A. and Siddiqi, A. (Eds.): *The Handbook of Displacement*, pp.237–254, Springer International Publishing, London, UK, DOI: 10.1007/978-3-030-47178-1_17.
- Wong, T.K. (2015) *Rights, Deportation, and Detention in the Age of Immigration Control (1st ed.)*, Stanford University Press, Stanford, California, DOI: 10.2307/j.ctvqsdn6.
- Xanthopoulou, E. (2018) 'Mutual trust and rights in EU criminal and asylum law: three phases of evolution and the uncharted territory beyond blind trust', *Common Market Law Review*, Vol. 55, No. 2, pp.489–510.

Nores

- 1 This number is an estimate based on publicly available data on yearly refusals of entry at the external border (https://doi.org/10.2908/MIGR_EIRFS, accessed 16/12/2025), third-country nationals returned following an order to leave (https://doi.org/10.2908/MIGR_EIRTN, accessed 16/12/2025) and outgoing Dublin transfers (https://doi.org/10.2908/MIGR_DUBTO, accessed 16/12/2025) from Eurostat. This number likely underestimates the scale of deportation in Europe, as it does not comprise statistics on the number of EU and non-EU citizens expelled following a criminal conviction or for reasons of public order and national security.
- 2 The data on deportation practices mentioned in sections 1 to 3 was retrieved from the Eurostat website (see: <https://ec.europa.eu/eurostat/databrowser/view>, accessed 15/05/2025). When averages are provided, they were calculated over the last 4 available years.
- 3 Two additional types of deportation measures can be found in French administrative courts: criminal bans from the territory and readmissions to EU Member State. Criminal bans from the territory are deportation measures issued by the judicial authority in the context of a criminal conviction. The control of the conditions of issuance and compatibility with article 8 ECHR falls to criminal judges (who, in the French system, belong to a different branch of the judiciary). Administrative judges only have a residual control over the compatibility of the criminal ban with the requirements of Article 3 ECHR. Readmission measures are types of deportation issued by the administration, whereby the individual is sent back not in their country of origin, but in the country from where they crossed the French border, if a bilateral readmission agreement exists between France and the neighbouring country. Both types of deportation appear only marginally in the deportation adjudication dataset: 415 judgments on criminal bans from the territory and 126 judgments on readmission to another Member State between June 2022 and March 2025. For reasons of clarity and because of their marginality in deportation judgments, I have left out these two deportation measures in this paper.